

6/23/77 [1]

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THE PRESIDENT'S SCHEDULE

Thursday-June 23, 1977

7:30 Dr. Zbigniew Brzezinski - The Oval Office.

✓ 8:00 Meeting with Senatorial Group.
(45 min.) (Mr. Frank Moore) - The Roosevelt Room.

10:30 Mr. Jody Powell - The Oval Office.

✓ 11:00 Drop-By Meeting with Mayor Coleman A. Young
(20 min.) and a Delegation of Community Leaders from Detroit.
(Mr. Jack Watson) - The State Dining Room.

12:00 Lunch with Mr. Bert Lance - The Oval Office.

✓ 1:00 Meeting on Reorganization/Executive Office of
(60 min.) the President. (Mr. James McIntyre).
The Cabinet Room.

2:00 Budget Review Meeting. (Mr. Bert Lance).
(75 min.) The Cabinet Room.

6:40 Depart South Grounds via Helicopter en route
Andrews Air Force Base and New York City.

THE WHITE HOUSE
WASHINGTON

June 23, 1977

Stu Eizenstat
Bert Lance

The attached was returned in the
President's outbox and is forwarded
to you for your information and
appropriate action.

Rick Hutcheson

Re: "Saved" grade and pay for
Federal Employees
downgraded

THE WHITE HOUSE
WASHINGTON

ACTION
FYI

	MONDALE
	COSTANZA
X	EIZENSTAT
	JORDAN
	LIPSHUTZ
	MOORE
	POWELL
	WATSON

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to
Carp/Huron within
48 hours; due to
Staff Secretary
next day

	FOR STAFFING
	FOR INFORMATION
X	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	GAMMILL
	HARDEN
	HOYT
	HUTCHESON
	JAGODA
	KING

	KRAFT
X	LANCE
	LINDER
	MITCHELL
	POSTON
	PRESS
	B. RAINWATER
	SCHLESINGER
	SCHNEIDERS
	SCHULTZE
	SIEGEL
	SMITH
	STRAUSS
	WELLS
	VOORDE

THE WHITE HOUSE
WASHINGTON

Mr. President:

Jordan, Eizenstat, Lipshutz
and Harden concur with Lance.

CSC requests a decision on
the attached by Thursday,
if possible.

Rick



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE PRESIDENT HAS SEEN.

Stu - if costs not high -
ok ①

JUN 22 1977

MEMORANDUM FOR THE PRESIDENT

FROM: BERT LANCE

Bla -

SUBJECT: "Saved" grade and pay for Federal employees
downgraded

We need your decision on the Administration's position on this topic in time for hearings scheduled June 27 at which Chairman Campbell will be the Administration's spokesman.

Background

Chairman Campbell has already commented on this difficult, complex problem in a recent memorandum to you. The Chairman's memorandum concerned Rep. Nix' request that you declare a moratorium on all downgradings while Congress considers a Nix bill to allow permanent, indefinite "saved" grade for employees downgraded without personal fault, in job reclassification actions but not in other circumstances such as reorganization, reduction in force, etc. Existing law does not allow saved grade at all, and generally permits saved pay for only two years. At the end of that period, pay is actually cut. Under current law, too, saved pay is allowed in all situations that result in downgrading, not merely job reclassification.

Chairman Campbell's memorandum suggested that it may be questionable whether the public would support the special protection permanent grade retention would afford Federal employees, and that the Administration's position may receive a good deal of public notice. Accordingly, the Chairman recommends that the Administration submit a counter-proposal to the Nix bill. He proposes a bill that would provide uniform treatment in all downgradings whatever the cause. We think it is a reasonable compromise between the restrictions of present law and the Nix bill.

Major provisions of proposed Administration bill

The Civil Service Commission proposal would --

- allow downgraded employees to retain their higher grade and pay, as a "personal grade" ("saved grade") for two years, where downgrading is required as a result of a variety of circumstances beyond the

employees' control, as in reorganization, job reclassification, reduction-in-force, transfer of function, staff reductions, etc.

- after two years in the personal grade, employees would be placed officially in their real or lower grade and the personal grade would terminate. However, they would be entitled to "saved" pay if the rate for the personal grade exceeds the highest rate of pay for the grade to which they have been reduced. Employees in these circumstances would receive only 50% of each future annual pay adjustment so that, in time, they would be phased in gradually to the maximum pay rate of the lower grade.

Let me clarify with an example: An employee downgraded from step 8 of the GS-10 level (\$19,143) to GS-9, would be placed in the top step of GS-9, because the GS-10 rate exceeds the top rate for GS-9 (\$18,327). For the first two years, however, the employee would be deemed to be in the personal grade at GS-10, step 8, with accompanying pay, even though the real grade for the position occupied is GS-9. After two years, the personal grade would terminate and GS-9 would be the real grade, but the employee would continue to receive the GS-10 pay rate, as a "saved" rate, until such time as the maximum rate for GS-9 exceeds it. Pay would never be cut, but it would not increase as fast as the pay of other employees.

During the two-year saved grade period, such employees would be entitled to extraordinary priority job placement rights and retraining, if necessary to enable them to find other jobs at their personal grade.

The proposed Administration bill would bar grievance and appeals actions by employees who otherwise would contest the downgrading actions. This is a very useful provision that would eliminate time-consuming, costly administrative appeals processes in the agencies. The Administration proposal would not be retroactive, unlike the Nix bill which would be retroactive to June 30, 1975.

The substitute bill was developed by the Civil Service Commission in consultation with an informal working group comprising staff of Defense, Health, Education, and Welfare, and Commerce Departments, and the Veterans Administration, which the Commission set up in response to Secretary Califano's urging. OMB is now circulating the Commission's proposal for agency comments.* We are confident it will have widespread support, reflecting as it does a consensus of the large Federal employers.

*HEW opposes the Commission's recommendation as written; they want indefinite grade retention and indefinite pay retention. Defense strongly opposes indefinite grade and pay retention.

Recommendation

During your earlier visits to some of the Departments, you indicated to the employees that they would not be adversely affected by the Administration's Government-wide reorganization effort. Some of your statements have been interpreted as an absolute guarantee that employees will never be reduced in grade or pay as a result of reorganizations.

While the Commission's proposal does not literally provide such a total guarantee, it goes a very long way in that direction--far beyond what the Federal Government has ever provided before. We believe the proposal is generous, and provides a real incentive to agencies to take steps to ensure that most downgrading situations are satisfactorily resolved within a two-year period.

The adverse effect on employees is the same whether downgrading occurs in a job reclassification or in reduction-in-force as a result of reorganization, transfer of function, staff reduction, etc. The Nix bill approach, accordingly, is discriminatory because it treats only with downgradings in job reclassification. On the other hand, we do not believe it would be prudent to support the permanent saved grade approach of the Nix bill for all downgradings. That could delay for many years, in some cases, the fruits of eliminating duplication and overlap, and of streamlining and increased efficiency generally, that we are attempting to achieve by reorganization. Apart from the added cost involved, retaining duplicate payroll clerks and other administrative support personnel until a situation corrects itself by attrition can take longer than we would like. The Government's overall attrition rates can be misleading, because attrition will not always occur quickly enough, or in the right locations, or agencies, or with the right people. Further, the Commission's proposal probably provides far greater protection than usual practices in the non-Federal sector, although I am told there is little reliable information on which to base such a comparison. So far as we know, saved grade is most uncommon, while freezing pay is more prevalent.

We think the Commission's bill strikes a good balance between management needs and employees' equities, and basically delivers on your commitments in a fair and reasonable way.

We are disposed to clear the Civil Service Commission proposal unless you object.

✓ Clear CSC proposal

Support Nix bill approach
but without retroactive
feature

JC.

THE WHITE HOUSE

WASHINGTON

Date: June 22, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat *concur by phone*
Bob Lipshutz
Frank Moore *he*
Jack Watson *he*
Richard Harden *- attached*

FOR INFORMATION:

The Vice President
Hamilton Jordan *Attached*
Jim King
Bob Linder

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance's memo 6/22/77 re "Saved" grade and
pay for Federal employees downgraded

**YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:**

TIME:

IMMEDIATE

DAY:

TURNAROUND

DATE:

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

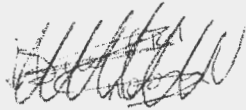
Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

*Change on P
2 needed
Per Preston,
OMB
6/22
630P
B*

THE WHITE HOUSE
WASHINGTON



ACTION	FYI
<input checked="" type="checkbox"/>	MONDALE
<input checked="" type="checkbox"/>	COSTANZA
<input checked="" type="checkbox"/>	EIZENSTAT
<input checked="" type="checkbox"/>	JORDAN
<input checked="" type="checkbox"/>	LIPSHUTZ
<input checked="" type="checkbox"/>	MOORE
<input checked="" type="checkbox"/>	POWELL
<input checked="" type="checkbox"/>	WATSON

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<input type="checkbox"/>	AGENCY REPORT
<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER

Comments due to
Carp/Huron within
48 hours; due to
Staff Secretary
next day

<input checked="" type="checkbox"/>	FOR STAFFING
<input type="checkbox"/>	FOR INFORMATION
<input type="checkbox"/>	FROM PRESIDENT'S OUTBOX
<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
<input checked="" type="checkbox"/>	IMMEDIATE TURNAROUND

<input type="checkbox"/>	ARAGON
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<input type="checkbox"/>	BUTLER
<input type="checkbox"/>	CARP
<input type="checkbox"/>	H. CARTER
<input type="checkbox"/>	CLOUGH
<input type="checkbox"/>	FALLOWS
<input type="checkbox"/>	FIRST LADY
<input type="checkbox"/>	GAMMILL
<input checked="" type="checkbox"/>	HARDEN
<input type="checkbox"/>	HOYT
<input type="checkbox"/>	HUTCHESON
<input type="checkbox"/>	JAGODA
<input checked="" type="checkbox"/>	KING

<input type="checkbox"/>	KRAFT
<input type="checkbox"/>	LANCE
<input type="checkbox"/>	LINDER
<input type="checkbox"/>	MITCHELL
<input type="checkbox"/>	POSTON
<input type="checkbox"/>	PRESS
<input type="checkbox"/>	B. RAINWATER
<input type="checkbox"/>	SCHLESINGER
<input type="checkbox"/>	SCHNEIDERS
<input checked="" type="checkbox"/>	SCHULTZE
<input type="checkbox"/>	SIEGEL
<input type="checkbox"/>	SMITH
<input type="checkbox"/>	STRAUSS
<input type="checkbox"/>	WELLS
<input type="checkbox"/>	VOORDE

We will need your answer by Wednesday or Thursday of this week.

_____ Clear CSC proposal

_____ Support Nix bill approach but without
retroactive feature

_____ See me

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 22 1977

MEMORANDUM FOR THE PRESIDENT

FROM:

BERT LANCE *Bla-*

SUBJECT: "Saved" grade and pay for Federal employees
downgraded

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_____ Support Nix bill approach but without
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_____ See me

Attachment



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

June 15, 1977

Honorable Bert Lance
Director, Office of Management and Budget
Washington, D.C. 20530

Dear Mr. Lance:

One of the many important issues before us for resolution concerns the question of establishing some form of grade retention protection for employees faced with the threat of downgrading either because of a classification review of their positions or because of prospective reorganization efforts. At stake is improved organizational effectiveness throughout the Federal Government. A major consideration in our study and deliberation on this topic was the necessity for obtaining a balance between the needs of management and the concerns of employees while avoiding any major erosion of the essential principles and structure on which the integrity of the Government's classification and pay comparability systems is based.

It is clear that Government managers must meet their legal obligations under personnel laws. They must effectively organize their work force, and they must structure the work of their organizations into specifically defined positions. By assuring that those positions are correctly classified, the employees appointed to the positions will be properly compensated in accordance with assigned duties and responsibilities and the established principle of comparability. No manager can long ignore or disregard these obligations without eventually having to contend with employee morale difficulties, organization disruption, and problems of misalignment, inequity, and grade inflation.

The relatively recent implementation of comprehensive classification audit programs in certain Federal agencies has surfaced many problems. In at least one major department, it is now estimated, based on preliminary findings, that a significant percentage of its positions are overgraded. Any resulting widespread downgrading of employees would likely have several adverse effects: downgraded employees would experience a lowered status concomitantly with some loss of self-esteem and the agency could be burdened with staggering morale problems as well as the time-consuming process of responding to numerous employee appeals and grievances.

The prospect of uncovering large numbers of overgraded jobs in Federal agencies, together with the pronouncements of the President regarding his commitment to protect Federal employees from any adverse impact of forthcoming reorganization plans, have further intensified interest in new approaches to employee protections.

We have become aware of increasing support on the part of Federal agencies for new and expanded protections for employees who may be faced in the future with loss of grade and decreased pay as a result of certain events. The introduction of a number of legislative proposals in the Congress which would institute a system providing for employee retention of grade represents tangible evidence of the interest in lessening or avoiding the adverse impact on employees of management-initiated actions over which the employees have no control.

After a careful analysis of the concept of grade retention, a concept which the Commission in the past has opposed, we are prepared to recommend an Administration position on the matter. While our proposal takes cognizance of the necessity for preserving established systems of classification and pay from serious harm, it also recognizes the importance of the Federal Government as an employer displaying a humane and considerate attitude toward its employees.

The concept we advocate would provide improved protection for employees by authorizing temporary grade retention for 2 years for employees whose positions are to be downgraded through no fault of their own followed, as necessary, by indefinite salary retention. Employees whose rate of pay is above the maximum step of the grade of the position occupied would receive one-half of all future general increases in pay. This approach also envisions investing the Civil Service Commission with authority to issue regulations requiring agency priority consideration for the reassignment of employees to positions commensurate with their retained grades, retraining these employees where appropriate to improve their qualifications, and directing or monitoring placement in the agencies.

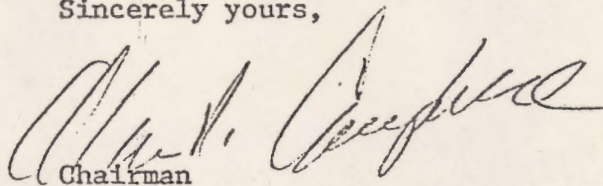
Adoption of the proposed temporary grade retention approach, integrated with the proposal for improved salary retention as an Administration position, would require changes in the law. Therefore, we are submitting a formal legislative proposal which accomplishes these objectives. The enclosed draft bill incorporates the basic provisions for pay retention which are contained in the proposal currently before OMB for consideration.

This approach is consistent with the President's pronouncements assuring that Federal employees will not be adversely affected by reorganization action. A deliberately moderated pace of reorganization would largely avoid adverse impact on employees by attrition; however, where this is not possible, a new program of temporary grade retention followed by indefinite salary retention would help to carry out the President's assurances to the Federal work force.

We would like to obtain your reaction as to whether this proposal is in line with the objectives of the Administration.

By direction of the Commission:

Sincerely yours,



Chairman

Enclosure



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

Honorable Thomas P. O'Neill
Speaker of the House

Dear Mr. Speaker:

The Civil Service Commission submits with this letter, for consideration by the Congress, proposed legislation which will establish a system of temporary grade retention to be followed by indefinite pay retention for Federal employees who are downgraded through no fault of their own. This proposal will assist Federal agencies in carrying out programs of job classification review, facilitate accomplishment of the President's future reorganization plans for the Federal Government, and provide improved protections to employees.

It is necessary from time to time to change an employee to a lower grade for reasons which are beyond his control. Unless some special provision is made in the system to accommodate to these changes, they have an adverse impact upon the employees affected and the organizations in which they work. Under current law, there is no provision which would permit employees in these circumstances to be retained in their grade. The law does provide that the pay of an employee who is reduced through no fault of his own and who otherwise qualifies for pay retention, can be retained when necessary for a period of two years. There are some instances wherein employees do not qualify for this benefit.

We believe our proposal can reasonably balance on the one hand, the interests of the Government in the efficient accomplishment of its programs and the integrity of its classification and pay systems, and on the other, the needs and concerns of employees caught in situations not of their making.

A detailed discussion of the proposal is contained in the accompanying legislative language, section analysis, and statement of purpose and justification.

A similar letter is being sent to the President of the Senate.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this proposal.

By direction of the Commission:

Sincerely yours,

Chairman

Enclosures

To amend title 5, United States Code; to provide for retention of grade and pay for certain employees, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the
2 United States of America in Congress assembled, That title 5, United
3 States Code, is amended as follows:

4 (1) by adding the following new subchapter VII to chapter 53:

5 "SUBCHAPTER VII - GRADE AND PAY RETENTION

6 "§ 5371. Purpose

7 "It is the purpose of this subchapter to provide a system by which
8 employees who would otherwise be reduced in grade or pay through no
9 fault of their own may be reasonably protected, but without impeding the
10 proper classification of positions or the reorganization of functions or
11 duties in an organization, and to provide for pay retention in certain
12 other instances.

13 "§ 5372. Definitions; coverage

14 "(a) For the purposes of this subchapter --

15 "(1) 'employee' means an individual who holds a career or
16 career-conditional appointment in the competitive service or an
17 appointment of equivalent tenure in the excepted service and who is
18 covered by or moving to the General Schedule classification and pay
19 system under chapter 51 of this title and subchapter III of this
20 chapter or an individual covered by or moving to a prevailing rate
21 system under subchapter IV of this chapter; and an employee covered
22 in section 2105(c) of this title.

23 "(2) 'agency', 'position', and 'grade' have the meaning given
24 by them by sections 5102 and 5342 of this title;

25 "(3) 'personal grade' means the grade held by an employee

1 under the provisions of section 5373 of this title; and

2 "(4) 'scheduled rate of pay' means a rate of pay (including a
3 rate of pay under section 5374 of this title) fixed by law or
4 administrative action for a position or personal grade held by an
5 employee, before any deductions and (notwithstanding the provisions
6 of section 5343(f) of this title) exclusive of a night differential
7 or any other kind of additional pay.

8 "(b) Except as provided by subsection (c) of this section and section 5375
9 of this title, the provisions of this subchapter shall apply only to an employee
10 who has served not less than 52 consecutive weeks at a grade or grades higher
11 than the grade of the position to which the employee is being assigned or
12 to which the employee's position is being downgraded when --

13 "(1) the employee's position is being reclassified to a lower
14 grade in accordance with the provisions of chapter 51 of this
15 title or section 5346 of this chapter;

16 "(2) the employee is being assigned to a position in a lower
17 grade as a result of reduction in force;

18 "(3) the employee is being moved to the General Schedule or
19 to a prevailing rate system as the result of an action described in
20 paragraphs (1) or (2) of this subsection; or

21 "(4) the employee is being affected by such other situations
22 as may be identified and determined by the Civil Service Commission
23 to warrant coverage of the employee in the interest of facilitating
24 agency accomplishment of mission.

25 "(c) Nothing in this subchapter shall prevent the separation of an

1 employee under reduction in force or adverse action procedures, or prevent
2 a reduction in grade or pay for an employee who is reduced --

3 "(1) for personal cause;

4 "(2) at the employee's own request; or

5 "(3) as a condition of a temporary promotion or
6 assignment to position in a higher grade.

7 "(d) The provisions of this subchapter shall cease to apply to an
8 employee who --

9 "(1) has a break in service of one workday or more;

10 "(2) is demoted, transferred, or reassigned --

11 "(A) for personal cause; or

12 "(B) at the employee's own request;

13 "(3) becomes entitled to a rate of pay equal to or higher than
14 that provided by this subchapter by reason of some other provision
15 of law; or

16 "(4) declines to accept the reasonable offer of a position,
17 the rate of pay for which is equal to or greater than the rate of
18 pay provided by this subchapter.

19 "8 5373. Grade retention

20 "(a) When an employee's position is reduced in grade or the employee
21 is assigned to a position in a lower grade in an action covered by this
22 subchapter, the employee shall continue to hold the previous grade as a
23 personal grade and such personal grade shall be the grade of the employee
24 for determinations of pay, benefits, eligibility for training and promotion,
25 and for such other purposes as deemed appropriate by the Civil Service Commission.

1 "(b) The Civil Service Commission shall prescribe regulations to
2 carry out this subchapter. Such regulations may include provision
3 for --

4 "(1) requiring agencies to undertake retraining, as appropriate,
5 to improve the employees' qualifications, thus enhancing the opportunity
6 for selection for positions which are equal in grade to the personal
7 grade level;

8 "(2) requiring agencies to give priority consideration for
9 selection for positions for which employees qualify, which are
10 equal in grade to their personal grade or which are above the grade
11 of the position occupied;

12 "(3) Civil Service Commission monitoring of agency vacancies
13 and requiring agencies to effect placements, including such placements
14 in an agency other than the agency in which the employee is employed;
15 and

16 "(4) termination of grade retention upon expiration of the
17 period which ends two years from the date of the action which
18 brought the employee under the coverage of this subchapter.

19 "(c) If the employee has not been reassigned or transferred to a
20 position at the same or higher grade as the employee's personal grade
21 within two years from the date the employee was brought under the
22 provisions of this section, the employee's personal grade shall terminate
23 and the employee shall be placed in the grade of the position occupied
24 at the end of the two-year period and the employee shall be entitled to
25 pay retention under section 5374 of this title.

1 "§ 5374. Pay retention.

2 "(a) An employee who has been covered under section 5373 of this
3 title, but who has not been reassigned or transferred to a position in
4 the same or higher grade as the employee's personal grade within two years
5 of such coverage, shall be entitled to a rate of pay which is not less
6 than the scheduled rate of pay held by the employee in his personal
7 grade. If such rate exceeds the maximum rate of the lower grade in
8 which the employee's position has been placed, such rate shall become
9 his retained rate, provided that the retained rate may not exceed one
10 and one-half times such maximum rate. Thereafter, the employee shall
11 receive one-half of the amount of each subsequent increase in the maximum
12 rate of the grade to which the employee was reduced until the retained
13 rate is terminated under section 5372(d) of this title.

14 "(b) The Civil Service Commission is authorized to issue regulations
15 governing selection of the rate of pay of the employee upon termination
16 of the personal grade retention period.

17 "§ 5375. Pay retention in other situations

18 "The Civil Service Commission may prescribe regulations providing
19 pay retention benefits as provided under section 5374 of this title for
20 employees whose pay would otherwise be reduced as a result of:

21 "(1) the movement of employees with their positions from other
22 Federal pay systems to the General Schedule system or a prevailing
23 rate system;

24 "(2) the movement of employees from one pay schedule to another
25 pay schedule within the prevailing rate systems; or

"(3) the reduction or elimination of a special rate of pay established under section 5303 of this title.

§ 5376. Adverse actions

"No action taken under the provisions of this subchapter, including assignment and termination of personal grade, reassignment to a position equal in grade to the employee's personal grade, placement of the employee in the position occupied upon expiration of the grade retention period, or receipt of one-half of future general increases in pay upon gaining entitlement to pay retention, constitutes an adverse action as defined in section 7511 of this title.

§ 5377. Regulations

"Subject to such policies as the President may prescribe, the Civil Service Commission shall issue regulations necessary for the administration of this subchapter.";

(2) by inserting in the analysis of chapter 53, the following new subchapter VII:

"SUBCHAPTER VII GRADE AND PAY RETENTION

"5371. Purpose

"5372. Definitions; coverage

"5373. Grade retention

"5374. Pay retention

"5375. Pay retention in other situations

"5376. Adverse actions

"5377. Regulations";

(3) by striking out sections 5334(d), 5337, and 5345;

(4) by striking out "section 5337" each place it occurs in sections 5107, 5334(b), and 8704(d)(1) and in place thereof inserting "subchapter VII of chapter 53"; and

(5) by striking out "section 5345" in section 5349(a) and inserting in place thereof "subchapter VII of chapter 53" and by striking out "paragraph (2) of section 5345(a)" and in place thereof inserting "sections 5374 and 5375".

Sec. 2. (a) The provisions of this Act are effective on the first day of the first applicable pay period which begins on or after the ninetieth day after the date of enactment of this Act.

(b) An employee who was receiving a retained rate of pay under the provisions of sections 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the date of enactment of this Act shall not have any retained rate of pay reduced or terminated by reason of this Act.

SECTION ANALYSIS

To accompany a bill to amend title 5, United States Code, to provide for grade and pay retention of certain employees.

This amendment adds a new subchapter VII to chapter 53 of title 5, United States Code, and includes new sections 5371, 5372, 5373, 5374, 5375, 5376, and 5377.

SECTION 5371. PURPOSE

This section states the purpose of the amendment: to provide reasonable protections in grade and pay for employees faced with downgrading due to reclassification or reorganization action, and to provide for pay retention in certain other instances.

SECTION 5372. DEFINITIONS AND COVERAGE

This section contains the definitions of certain terms and delineates its coverage. Subsection (a) contains definitions. Clause (1) defines "employee" as an individual now under the General Schedule, an individual now under a prevailing rate system, or an individual moving to a position under the General Schedule or a position in a prevailing rate system. Clause (2) defines the terms "agency", "position", and "grade" as they have been previously defined under the sections of title 5 pertaining to General Schedule (Section 5102) and prevailing rate (Section 5342) employees. In defining the term "agency," both sections agree that it means "an executive agency" and both exclude from this definition the following:

- a Government controlled corporation
- the Tennessee Valley Authority
- the Alaska Railroad
- the Virgin Islands Corporation
- the Atomic Energy Commission
- the Central Intelligence Agency
- the Panama Canal Company
- the National Security Agency, Department of Defense

Under section 5342, an additional agency is listed as an exclusion, the Bureau of Printing and Engraving (except for the purposes of establishment of pay rates comparable to prevailing rates). Under section 5102, certain other organizations are added to the definition of "agency":

- the Library of Congress
- the Botanic Garden
- the Government Printing Office
- the Office of the Architect of the Capitol, and
- the government of the District of Columbia.

Both sections define "positions" as the work, consisting of the duties and responsibilities, assignable to an employee. Section 5102 defines "grade" as including all classes of positions which, although different with respect to kind of subject-matter of work, are sufficiently equivalent as to the level of difficulty and responsibility and the level of qualification requirements of the work to warrant their inclusion within one range of rates of basic pay in the General Schedule. Section 5342 contains no definition of the term "grade."

Clause 3 defines "personal grade" as the employee's retained higher grade held prior to action which downgraded the position.

Clause 4 defines "scheduled rate of pay" as a rate of pay fixed by law or administrative action for a position or personal grade exclusive of all deductions and additions, including the exclusion of night differential, normally included as a part of basic pay.

Subsection (b) states that provisions of this amendment will apply to employees who have occupied their grade, or higher grades, for at least 52 weeks prior to downgrading caused by reclassification, reduction in force, or movement to a position in the General Schedule or in a prevailing rate system. Subparagraph (4) permits the Civil Service Commission to extend coverage of this subchapter to any other situation identified wherein agency accomplishment of mission would be facilitated.

Subsection (c) indicates that entitlement to grade or pay retention does not preclude an employee being separated by reduction in force or by adverse action. The subsection also states that as an exception to the bill's provisions a reduction in grade or pay can occur when the employee is reduced, for personal cause, at the employee's own request or as a condition of a temporary promotion.

Subsection (d) defines the conditions under which an employee may lose entitlement to application of these provisions: a break in service of one workday or more (separatees may not return to employment and retain eligibility for grade or pay retention); demotion, transfer, or reassignment for personal cause or at the employee's own request. Inasmuch as these represent conditions under which an employee may be initially denied grade and pay retention, they constitute bases for denial of their continuation as well. The subsection continues, listing two other valid reasons for discontinuance of these benefits: the employee becomes eligible for a rate of pay equal to or higher than that provided under grade and pay retention provisions (e.g., the position is upgraded, the employee receives a promotion in another field or with another agency) or the employee declines to accept the reasonable offer of a position whose rate of pay equals or exceeds that of his personal grade. It is anticipated that the Civil Service Commission in its regulations will specify that such refusal pertains to an offer only within the employee's agency, unless the CSC determines that a Government-wide placement program will be necessary, in which event the regulations will specify that refusal to accept any such offer will constitute grounds for loss of entitlement to continuing grade or salary retention.

SECTION 5373. KEY PROVISIONS

Section 5373 identifies the key provisions of the grade retention program. Subsection (a) explains the right of the employee to hold his previous grade as a personal grade, which is to be used for purposes such as pay setting, allowances and benefits, and establishing eligibility for training, promotion, and reassignment. Should an employee already holding a personal grade be affected by further reductions in force, he would compete according to his position assignment, but would continue to hold his personal grade even should assignment to a still lower graded position be required.

Subsection (b) empowers the Civil Service Commission to develop, implement, and enforce regulations to carry out the provisions of this subchapter. Although not limited in scope except by the general framework of the concept, such regulations may include the requirement for establishment of retraining programs within agencies for employees when it appears that their qualifications require improvement or broadening in order to achieve placement in positions equal to their personal grade level. This subsection also authorizes the Civil Service Commission to prescribe regulations governing the priority consideration to be given employees possessing personal grade for reassignment or transfer to positions commensurate with their personal grade levels. It is envisioned that the Civil Service Commission would develop and implement a program of enforced placement for these employees.

According to dictates of circumstances, such priority consideration may be restricted to the employee's agency or it may be broadened to include other Federal agencies. The CSC regulations will, however, require absolute priority consideration of employees on personal grades for appropriate vacant positions with documented, approved reasons for non-selection. The Civil Service Commission is authorized to monitor vacancies and if necessary, to direct placement in agencies. Procedures governing the termination of grade retention upon expiration of the authorized period will be provided in detail in CSC regulations.

Subsection (c) explains that if the employee has not attained a grade equal to or higher than his personal grade upon expiration of the two-year retention period, the personal grade shall terminate and the employee shall be placed in the grade of the position then occupied; simultaneously, the employee will be entitled to pay retention under later sections of this subchapter. The "position then occupied" will be the lower-graded position originally determined to be the correct position to which the employee is entitled whether through reclassification or reduction-in-force (reason for reduction-in-force is immaterial).

Section 5374 deals with pay retention, the follow-on action to grade retention. Subsection (a) explains the entitlements generally: an employee who has been eligible for grade retention, but whose period of grade retention has expired, shall be entitled to a rate of pay which is not less than the scheduled rate of pay of the personal grade.

Therefore, an employee with personal grade whose rate of pay may be accommodated within the rate range of the grade of the position to which downgraded will receive the appropriate step. These employees will receive the full amount of any future general increases in pay. For those whose rate of pay exceeds the maximum of the grade to which demoted, their rate of pay is limited to 150% of the top step of the grade to which assigned. Employees whose rate of pay exceeds the maximum step of the grade to which assigned shall be entitled to one-half of all future general increases in pay. In this way, such employees will be gradually phased back into the system; at the point when their pay, which has risen more slowly due to receipt of half-increases, is equalled or exceeded by the maximum step of the grade of the position which they occupy, the employees will be placed in that maximum step.

Subsection (b) authorizes the Civil Service Commission to prescribe regulations governing the selection of the rate of pay of the employee upon termination of the personal grade period. The regulations will deal with such situations in which the employee's rate of pay of the personal grade falls between two steps of the grade to which downgraded and computation of retained rates (those beyond the maximum step of the grade to which demoted).

The above guidance will be expanded in CSC regulations which are authorized by subsection (b).

Section 5375 deals with pay retention in situations other than those following grade retention. It specifies that the Civil Service Commission may prescribe regulations pertaining to pay retention for employees who are converted with their positions to the General Schedule or to a prevailing rate system, who move from one pay schedule to another within the prevailing rate systems, or who have had their special rates of pay reduced or eliminated. These provisions currently exist in law or Executive order.

Section 5376 eliminates the basis for employee adverse action appeals by stating that no action taken under the provisions of this subchapter may be considered an adverse action as defined in section 7511, title 5: "(2) 'adverse action' means a removal, suspension for more than 30 days, furlough without pay, or reduction in rank or pay." While this provision eliminates appeals from adverse actions, it does not abrogate the right of an employee to file a classification appeal at any time.

Section 5377 empowers the Civil Service Commission to issue regulations "necessary for the administration of this subchapter". Although this authorization is contained in other sections in which specific matters were mentioned, this provision is a general authority for the Commission to develop and implement regulations which may be required for unforeseen circumstances.

Paragraph 2 of this bill provides for the insertion of the new subchapter VII in the analysis of chapter 53. Those sections of law (specifically section 5334(d), section 5337, and section 5345) which provide for pay saving are repealed since these provisions of law would be in the new subchapter VII.

In addition, all references to "section 5337" in sections 5107, 5334(b), and 8704(d)(1) are to be replaced by inserting "subchapter VII of chapter 53"; and the reference to "paragraph (2) of section 5345(a)" is to be replaced by inserting "sections 5374 and 5375".

The second section of the bill states that the provisions of the Act are effective on the first day of the first applicable pay period which begins on or after the 90th day after enactment date. It also provides that no employee who is on a retained rate on the day before the date of enactment-of-the-law will suffer a reduction or termination of his retained rate as a result of the passage of the Act.

STATEMENT OF PURPOSE AND JUSTIFICATION
OF
A Bill to amend title 5, United States
Code, to provide for grade and pay
retention for certain employees.

PURPOSE

In the Federal Government, as in other organizations with formalized job evaluation systems, it becomes necessary from time to time to change employees to a lower grade for reasons which are beyond their control and not for personal cause. Downgrades can occur when jobs are recognized as being overgraded because of misclassification, or when, because of consolidation, mission changes, staff reductions or reorganization, affected employees are placed at lower grades. Employees who face downgrading through no fault of their own now receive salary retention protection for a period of two years and are entitled to special consideration for repromotion.

There appears to be increasing support for the idea that employees whose jobs are determined to be overgraded because of poor agency classification practices ought to be permitted to retain those grades so long as they continue to hold their positions, with the positions reverting to proper grades when vacated. Similarly, employees affected by circumstances beyond their control, such as a reduction in force or transfer of function, may be "bumped" into a lower grade position through no fault of their own. The argument has been advanced that in both instances (downgrading due to reclassification or reduction in force caused by any factor) the Federal Government has broken its commitment to its employees by unilaterally reducing a grade attained and accepted in good faith in initial hiring or in a subsequent promotion.

Some Federal agencies are now engaged in very comprehensive classification review programs and based on an initial sampling, they anticipate that many Federal employees will be adversely affected by the results of their review. Additionally, it is strongly believed that employees should be assured that they will not be substantially harmed by the effects of anticipated reorganizations within the Federal Government. It seems clear that decreased employee morale and organizational disruption are the consequences of any threat of large scale employee downgradings.

The major objective of this bill is to improve the protections afforded to Federal employees faced with such downgrading actions. The bill provides for a temporary period of grade retention to the employees (two years), followed by indefinite salary retention, which together with attrition and reinforced efforts under Commission leadership to place employees in jobs commensurate with their grade level, should help keep the potential adverse impact of classification reviews and reorganization to a minimum. The bill would also bring together under one provision of law, all existing authorities to retain salary in various circumstances.

JUSTIFICATION

The draft bill provides that an employee involved in a downgrading action, who has been in grade, or at higher grades, for one year, would retain that grade (hereinafter referred to as "personal grade") for a period of two years and would thereafter be eligible for indefinite pay retention. During the two-year period of grade retention, the personal grade would be the grade of the employee for purposes such as pay setting, allowances and benefits, and determining eligibility for training, promotion, and reassignment as if the employee's position were still at that grade. Should an employee already holding a personal grade be affected by further reductions in force, he would compete according to his position assignment but would continue to hold his personal grade even should assignment to a still lower-graded position be required.

Currently, even though employees demoted due to reclassification or reduction in force are not entitled to retain their grades, they are in most cases eligible for two years' salary retention. However, in certain circumstances, such as reduction in force caused by lack of funds or curtailment of work, employees may be denied even salary retention. This bill would cover all reduction-in-force situations, thus eliminating different treatment which is perceived by some as creating real inequities.

In considering the arguments in favor of grade retention, it is necessary to strike a balance between concern with needs of employees and the interests of the Government as an employer. It is apparent that temporary grade retention followed as necessary by indefinite salary retention accomplishes this objective. Grade retention which is limited to a specific period of time will keep to a minimum any possibility of damage to the integrity of the Government's classification and pay systems. This built-in time limitation (two years) will serve as a self-corrective factor in the system, and as an incentive to managers as well as to downgraded employees to seek placement at their personal grade levels during that period.

It is envisioned that this combination of grade/salary retention would eliminate the basis for many employee appeals and grievances inasmuch as no adverse action is experienced by the employee at the time the position of the employee is reclassified. Following the grade retention period with the added benefit of salary retention for an indefinite period also minimizes the adverse effects on the employee occasioned by the reduction-in-grade action. The proposed legislation takes cognizance of these facts by specifying that neither of these actions constitutes an adverse action.

By eliminating the adverse impact of grade reductions under this greatly improved grade/salary retention program, and thus, the need for adverse action appeals, both employees and agencies will be freed from the burdens associated with those actions, with a hoped-for improvement in morale and productivity.

A classification appeal may be filed by an employee at any time, and this bill does nothing to abrogate that right. Moreover, strengthened agency efforts to place the employee during the two-year period at a position warranting the personal grade, retraining to enhance qualifications, and CSC efforts behind reassignment to a position commensurate with the employee's personal grade should decrease the number of employees significantly, who are actually downgraded at the end of the two-year period.

A major feature of the proposed legislation concerns agency efforts to reassign the employee to a position equal in grade to his personal grade. The bill authorizes the Civil Service Commission to prescribe regulations ensuring that employees receive every consideration for reassignment to positions for which they qualify which are equal in grade to their personal grade. This authority would extend not only to efforts of the agency, but would permit the CSC to develop and implement a program of placement Federal Government-wide, including directing employee placement.

Agencies may be required to provide retraining for employees in an effort to improve their qualifications and thus enhance their employment prospects within their own agencies or with others. The authority granted to the Commission in this respect is general, but it is envisioned that regulations would require the development and administration of training plans by the employing agency under the aegis of the Commission.

Presumably, the employee would be attempting to obtain placement at his personal grade level during the two-year retention period. Should he not be successful, however, and should agency and Commission efforts fail to achieve placement at the personal grade level, the temporary period of grade retention is followed with indefinite salary retention, so that the employee would not suffer any reduction in his existing rate of pay.

Upon assignment to the lower grade of the position occupied, the employee would be entitled to a continuing rate of pay not less than that of his personal grade, unless this rate exceeds one and one-half times the rate of the maximum step of the grade which he will now occupy, in which case, it will be adjusted to that amount. The bill would replace the cumbersome computation now required in actions which involve demotion in excess of three grades. The unwieldy formula currently prescribed for salary retention purposes has long been a source of complaints.

Employees whose rate of pay is above the maximum step of the grade of the position occupied upon termination of the grade retention period will be entitled to receive one-half of all subsequent general increases in pay. Under this plan, an employee's existing rate of pay will not be reduced and his pay will not be frozen; instead, he will continue to receive increases, albeit at a reduced rate during the entire period he is paid a retained rate. This method also provides the means for phasing the employee's retained rate of pay gradually back into the system; eventually, the maximum step of the grade to which the employee has been downgraded will equal or exceed the retained rate of pay, at which time the employee's rate of pay will be adjusted to that rate.

The bill also covers those other situations in which salary retention only is authorized. The movement of an employee with his position to the General Schedule or to a prevailing rate system is an action which occurs through no fault of the employee and pay retention is authorized in situations of this type. The bill stipulates that employees moving between pay schedules of prevailing rate systems and employees whose special rate of pay (established under section 5303 of title 5) has been reduced or eliminated, are eligible for pay retention under regulations to be issued by the Commission. The bill merely repeats benefits to which employees in these situations already are entitled under current regulations. This proposal also stipulates that the entitlements of employees now receiving pay retention would not be reduced or terminated.

It is envisioned that the form of temporary grade retention outlined in the draft legislation, followed by indefinite salary retention, would meet the immediate needs of agencies and would assist in the accomplishment of the forthcoming reorganization plans for the Federal Government.

THE WHITE HOUSE

WASHINGTON

Date: June 22, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Bob Lipshutz
Frank Moore
Jack Watson
Richard Harden

FOR INFORMATION:

The Vice President
Hamilton Jordan
Jim King
Bob Linder

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance's memo 6/22/77 re "Saved" grade and
pay for Federal employees downgraded

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME:

IMMEDIATE

DAY:

TURNAROUND

DATE:

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

THE WHITE HOUSE
WASHINGTON

LANDON:

I think we should support the CSC proposal - for the first time, they are beginning to get some balance into a system that badly needs it. It's not perfect, but it's a start. Nix' bill goes too far and has potential for manipulation by employers in special cases.

E.
6/22

53
THE WHITE HOUSE

WASHINGTON

Date: June 22, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Bob Lipshutz
Frank Moore
Jack Watson
Richard Harden

FOR INFORMATION:

The Vice President
Hamilton Jordan
Jim King
Bob Linder

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance's memo 6/22/77 re "Saved" grade and pay for Federal employees downgraded

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME:

DAY:

DATE:

IMMEDIATE
TURNAROUND

*

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☒ No comment.

Please note other comments below:

*Price - Please note Eleanor's comment -
Even so -
This doesn't require action on our
part - but you might want to look
it over to see if there is anything we
should know -*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

THE WHITE HOUSE

WASHINGTON

6/22

Date: June 22, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat *concur*
 Bob Lipshutz
 Frank Moore *NC*
 Jack Watson *NC*
Richard Harden - *good + fair approach*

FOR INFORMATION:

The Vice President
 Hamilton Jordan *concur*
 Jim King
 Bob Linder

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance's memo 6/22/77 re "Saved" grade and pay for Federal employees downgraded

YOUR RESPONSE MUST BE DELIVERED
 TO THE STAFF SECRETARY BY:

TIME:

IMMEDIATE

DAY:

TURNAROUND

DATE:

ACTION REQUESTED:

☒ Your comments
 Other: ☐

STAFF RESPONSE:

☐ I concur. ☐ No comment.
 Please note other comments below:

It should be noted that the real savings will come when the employee is replaced. Sounds like a good and fair approach to a very difficult problem.

Richard

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

THE WHITE HOUSE

WASHINGTON

Date: June 22, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Bob Lipshutz
Frank Moore
Jack Watson
Richard Harden

FOR INFORMATION:

The Vice President
Hamilton Jordan
Jim King
Bob Linder

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance's memo 6/22/77 re "Saved" grade and
pay for Federal employees downgraded

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME:

IMMEDIATE

DAY:

TURNAROUND

DATE:

ACTION REQUESTED:

X Your comments
Other:

STAFF RESPONSE:

M. M. K. I concur.
Please note other comments below:

 No comment.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

June 15, 1977

Honorable Bert Lance
Director, Office of Management and Budget
Washington, D.C. 20530

Dear Mr. Lance:

One of the many important issues before us for resolution concerns the question of establishing some form of grade retention protection for employees faced with the threat of downgrading either because of a classification review of their positions or because of prospective reorganization efforts. At stake is improved organizational effectiveness throughout the Federal Government. A major consideration in our study and deliberation on this topic was the necessity for obtaining -- a balance between the needs of management and the concerns of employees while avoiding any major erosion of the essential principles and structure on which the integrity of the Government's classification and pay comparability systems is based.

It is clear that Government managers must meet their legal obligations under personnel laws. They must effectively organize their work force, and they must structure the work of their organizations into specifically defined positions. By assuring that those positions are correctly classified, the employees appointed to the positions will be properly compensated in accordance with assigned duties and responsibilities and the established principle of comparability. No manager can long ignore or disregard these obligations without eventually having to contend with employee morale difficulties, organization disruption, and problems of misalignment, inequity, and grade inflation.

The relatively recent implementation of comprehensive classification audit programs in certain Federal agencies has surfaced many problems. In at least one major department, it is now estimated, based on preliminary findings, that a significant percentage of its positions are overgraded. Any resulting widespread downgrading of employees would likely have several adverse effects: downgraded employees would experience a lowered status concomitantly with some loss of self-esteem and the agency could be burdened with staggering morale problems as well as the time-consuming process of responding to numerous employee appeals and grievances.

The prospect of uncovering large numbers of overgraded jobs in Federal agencies, together with the pronouncements of the President regarding his commitment to protect Federal employees from any adverse impact of forthcoming reorganization plans, have further intensified interest in new approaches to employee protections.

We have become aware of increasing support on the part of Federal agencies for new and expanded protections for employees who may be faced in the future with loss of grade and decreased pay as a result of certain events. The introduction of a number of legislative proposals in the Congress which would institute a system providing for employee retention of grade represents tangible evidence of the interest in lessening or avoiding the adverse impact on employees of management-initiated actions over which the employees have no control.

After a careful analysis of the concept of grade retention, a concept which the Commission in the past has opposed, we are prepared to recommend an Administration position on the matter. While our proposal takes cognizance of the necessity for preserving established systems of classification and pay from serious harm, it also recognizes the importance of the Federal Government as an employer displaying a humane and considerate attitude toward its employees.

The concept we advocate would provide improved protection for employees by authorizing temporary grade retention for 2 years for employees whose positions are to be downgraded through no fault of their own followed, as necessary, by indefinite salary retention. Employees whose rate of pay is above the maximum step of the grade of the position occupied would receive one-half of all future general increases in pay. This approach also envisions investing the Civil Service Commission with authority to issue regulations requiring agency priority consideration for the reassignment of employees to positions commensurate with their retained grades, retraining these employee where appropriate to improve their qualifications, and directing or monitoring placement in the agencies.

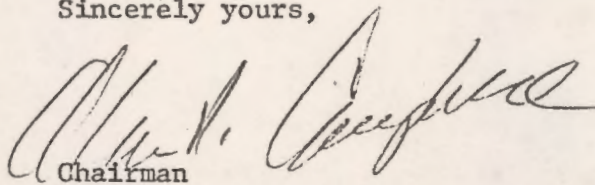
Adoption of the proposed temporary grade retention approach, integrated with the proposal for improved salary retention as an Administration position, would require changes in the law. Therefore, we are submitting a formal legislative proposal which accomplishes these objectives. The enclosed draft bill incorporates the basic provisions for pay retention which are contained in the proposal currently before OMB for consideration.

This approach is consistent with the President's pronouncements assuring that Federal employees will not be adversely affected by reorganization action. A deliberately moderated pace of reorganization would largely avoid adverse impact on employees by attrition; however, where this is not possible, a new program of temporary grade retention followed by indefinite salary retention would help to carry out the President's assurances to the Federal work force.

We would like to obtain your reaction as to whether this proposal is in line with the objectives of the Administration.

By direction of the Commission:

Sincerely yours,

A handwritten signature in dark ink, appearing to read "W. H. Clegg". The signature is fluid and cursive, with a large initial "W" and a long, sweeping tail.

Chairman

Enclosure



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

Honorable Thomas P. O'Neill
Speaker of the House

Dear Mr. Speaker:

The Civil Service Commission submits with this letter, for consideration by the Congress, proposed legislation which will establish a system of temporary grade retention to be followed by indefinite pay retention for Federal employees who are downgraded through no fault of their own. This proposal will assist Federal agencies in carrying out programs of job classification review, facilitate accomplishment of the President's future reorganization plans for the Federal Government, and provide improved protections to employees.

It is necessary from time to time to change an employee to a lower grade for reasons which are beyond his control. Unless some special provision is made in the system to accommodate to these changes, they have an adverse impact upon the employees affected and the organizations in which they work. Under current law, there is no provision which would permit employees in these circumstances to be retained in their grade. The law does provide that the pay of an employee who is reduced through no fault of his own and who otherwise qualifies for pay retention, can be retained when necessary for a period of two years. There are some instances wherein employees do not qualify for this benefit.

We believe our proposal can reasonably balance on the one hand, the interests of the Government in the efficient accomplishment of its programs and the integrity of its classification and pay systems, and on the other, the needs and concerns of employees caught in situations not of their making.

A detailed discussion of the proposal is contained in the accompanying legislative language, section analysis, and statement of purpose and justification.

A similar letter is being sent to the President of the Senate.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this proposal.

By direction of the Commission:

Sincerely yours,

Chairman

Enclosures

To amend title 5, United States Code, to provide for retention of grade and pay for certain employees, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the
2 United States of America in Congress assembled, That title 5, United
3 States Code, is amended as follows:

4 (1) by adding the following new subchapter VII to chapter 53:

5 "SUBCHAPTER VII - GRADE AND PAY RETENTION

6 "§ 5371. Purpose

7 "It is the purpose of this subchapter to provide a system by which
8 employees who would otherwise be reduced in grade or pay through no
9 fault of their own may be reasonably protected, but without impeding the
10 proper classification of positions or the reorganization of functions or
11 duties in an organization, and to provide for pay retention in certain
12 other instances.

13 "§ 5372. Definitions; coverage

14 "(a) For the purposes of this subchapter --

15 "(1) 'employee' means an individual who holds a career or
16 career-conditional appointment in the competitive service or an
17 appointment of equivalent tenure in the excepted service and who is
18 covered by or moving to the General Schedule classification and pay
19 system under chapter 51 of this title and subchapter III of this
20 chapter or an individual covered by or moving to a prevailing rate
21 system under subchapter IV of this chapter; and an employee covered
22 in section 2105(c) of this title.

23 "(2) 'agency', 'position', and 'grade' have the meaning given
24 by them by sections 5102 and 5342 of this title;

25 "(3) 'personal grade' means the grade held by an employee

1 under the provisions of section 5373 of this title; and

2 "(4) 'scheduled rate of pay' means a rate of pay (including a
3 rate of pay under section 5374 of this title) fixed by law or
4 administrative action for a position or personal grade held by an
5 employee, before any deductions and (notwithstanding the provisions
6 of section 5343(f) of this title) exclusive of a night differential
7 or any other kind of additional pay.

8 "(b) Except as provided by subsection (c) of this section and section 5375
9 of this title, the provisions of this subchapter shall apply only to an employee
10 who has served not less than 52 consecutive weeks at a grade or grades higher
11 than the grade of the position to which the employee is being assigned or
12 to which the employee's position is being downgraded when --

13 "(1) the employee's position is being reclassified to a lower
14 grade in accordance with the provisions of chapter 51 of this
15 title or section 5346 of this chapter;

16 "(2) the employee is being assigned to a position in a lower
17 grade as a result of reduction in force;

18 "(3) the employee is being moved to the General Schedule or
19 to a prevailing rate system as the result of an action described in
20 paragraphs (1) or (2) of this subsection; or

21 "(4) the employee is being affected by such other situations
22 as may be identified and determined by the Civil Service Commission
23 to warrant coverage of the employee in the interest of facilitating
24 agency accomplishment of mission.

25 "(c) Nothing in this subchapter shall prevent the separation of an

1 employee under reduction in force or adverse action procedures, or prevent
2 a reduction in grade or pay for an employee who is reduced --

3 "(1) for personal cause;

4 "(2) at the employee's own request; or

5 "(3) as a condition of a temporary promotion or
6 assignment to position in a higher grade.

7 "(d) The provisions of this subchapter shall cease to apply to an
8 employee who --

9 "(1) has a break in service of one workday or more;

10 "(2) is demoted, transferred, or reassigned --

11 "(A) for personal cause; or

12 "(B) at the employee's own request;

13 "(3) becomes entitled to a rate of pay equal to or higher than
14 that provided by this subchapter by reason of some other provision
15 of law; or

16 "(4) declines to accept the reasonable offer of a position,
17 the rate of pay for which is equal to or greater than the rate of
18 pay provided by this subchapter.

19 "8 5373. Grade retention

20 "(a) When an employee's position is reduced in grade or the employee
21 is assigned to a position in a lower grade in an action covered by this
22 subchapter, the employee shall continue to hold the previous grade as a
23 personal grade and such personal grade shall be the grade of the employee
24 for determinations of pay, benefits, eligibility for training and promotion,
25 and for such other purposes as deemed appropriate by the Civil Service Commission.

1 "(b) The Civil Service Commission shall prescribe regulations to
2 carry out this subchapter. Such regulations may include provision
3 for --

4 "(1) requiring agencies to undertake retraining, as appropriate,
5 to improve the employees' qualifications, thus enhancing the opportunity
6 for selection for positions which are equal in grade to the personal
7 grade level;

8 "(2) requiring agencies to give priority consideration for
9 selection for positions for which employees qualify, which are
10 equal in grade to their personal grade or which are above the grade
11 of the position occupied;

12 "(3) Civil Service Commission monitoring of agency vacancies
13 and requiring agencies to effect placements, including such placements
14 in an agency other than the agency in which the employee is employed;
15 and

16 "(4) termination of grade retention upon expiration of the
17 period which ends two years from the date of the action which
18 brought the employee under the coverage of this subchapter.

19 "(c) If the employee has not been reassigned or transferred to a
20 position at the same or higher grade as the employee's personal grade
21 within two years from the date the employee was brought under the
22 provisions of this section, the employee's personal grade shall terminate
23 and the employee shall be placed in the grade of the position occupied
24 at the end of the two-year period and the employee shall be entitled to
25 pay retention under section 5374 of this title.

1 "§ 5374. Pay retention.

2 "(a) An employee who has been covered under section 5373 of this
3 title, but who has not been reassigned or transferred to a position in
4 the same or higher grade as the employee's personal grade within two years
5 of such coverage, shall be entitled to a rate of pay which is not less
6 than the scheduled rate of pay held by the employee in his personal
7 grade. If such rate exceeds the maximum rate of the lower grade in
8 which the employee's position has been placed, such rate shall become
9 his retained rate, provided that the retained rate may not exceed one
10 and one-half times such maximum rate. Thereafter, the employee shall
11 receive one-half of the amount of each subsequent increase in the maximum
12 rate of the grade to which the employee was reduced until the retained
13 rate is terminated under section 5372(d) of this title.

14 "(b) The Civil Service Commission is authorized to issue regulations
15 governing selection of the rate of pay of the employee upon termination
16 of the personal grade retention period.

17 "§ 5375. Pay retention in other situations

18 "The Civil Service Commission may prescribe regulations providing
19 pay retention benefits as provided under section 5374 of this title for
20 employees whose pay would otherwise be reduced as a result of:

21 "(1) the movement of employees with their positions from other
22 Federal pay systems to the General Schedule system or a prevailing
23 rate system;

24 "(2) the movement of employees from one pay schedule to another
25 pay schedule within the prevailing rate systems; or

1 "(3) the reduction or elimination of a special rate of pay
2 established under section 5303 of this title.

3 § 5376. Adverse actions

4 "No action taken under the provisions of this subchapter, including
5 assignment and termination of personal grade, reassignment to a position
6 equal in grade to the employee's personal grade, placement of the employee
7 in the position occupied upon expiration of the grade retention period,
8 or receipt of one-half of future general increases in pay upon gaining
9 entitlement to pay retention, constitutes an adverse action as defined in
10 section 7511 of this title.

11 "§ 5377. Regulations

12 "Subject to such policies as the President may prescribe, the Civil
13 Service Commission shall issue regulations necessary for the administration
14 of this subchapter.";

15 (2) by inserting in the analysis of chapter 53, the following new
16 subchapter VII:

17 "SUBCHAPTER VII GRADE AND PAY RETENTION

18 "5371. Purpose

19 "5372. Definitions; coverage

20 "5373. Grade retention

21 "5374. Pay retention

22 "5375. Pay retention in other situations

23 "5376. Adverse actions

24 "5377. Regulations";

25 (3) by striking out sections 5334(d), 5337, and 5345;

1 (4) by striking out "section 5337" each place it occurs in sections
2 5107, 5334(b), and 8704(d)(1) and in place thereof inserting "subchapter
3 VII of chapter 53"; and

4 (5) by striking out "section 5345" in section 5349(a) and inserting
5 in place thereof "subchapter VII of chapter 53" and by striking out
6 "paragraph (2) of section 5345(a)" and in place thereof inserting "sections
7 5374 and 5375".

8 Sec. 2. (a) The provisions of this Act are effective on the first
9 ~~day of the first applicable pay period~~ which begins on or after the
10 ninetieth day after the date of enactment of this Act.

11 (b) An employee who was receiving a retained rate of pay under the
12 provisions of sections 5334(d), 5337, or 5345 of title 5, United States
13 Code, on the day before the date of enactment of this Act shall not have
14 any retained rate of pay reduced or terminated by reason of this Act.

SECTION ANALYSIS

To accompany a bill to amend title 5, United States Code, to provide for grade and pay retention of certain employees.

This amendment adds a new subchapter VII to chapter 53 of title 5, United States Code, and includes new sections 5371, 5372, 5373, 5374, 5375, 5376, and 5377.

SECTION 5371. PURPOSE

This section states the purpose of the amendment: to provide reasonable protections in grade and pay for employees faced with downgrading due to reclassification or reorganization action, and to provide for pay retention in certain other instances.

SECTION 5372. DEFINITIONS AND COVERAGE

This section contains the definitions of certain terms and delineates its coverage. Subsection (a) contains definitions. Clause (1) defines "employee" as an individual now under the General Schedule, an individual now under a prevailing rate system, or an individual moving to a position under the General Schedule or a position in a prevailing rate system. Clause (2) defines the terms "agency", "position", and "grade" as they have been previously defined under the sections of title 5 pertaining to General Schedule (Section 5102) and prevailing rate (Section 5342) employees. In defining the term "agency," both sections agree that it means "an executive agency" and both exclude from this definition the following:

- a Government controlled corporation
- the Tennessee Valley Authority
- the Alaska Railroad
- the Virgin Islands Corporation
- the Atomic Energy Commission
- the Central Intelligence Agency
- the Panama Canal Company
- the National Security Agency, Department of Defense

Under section 5342, an additional agency is listed as an exclusion, the Bureau of Printing and Engraving (except for the purposes of establishment of pay rates comparable to prevailing rates). Under section 5102, certain other organizations are added to the definition of "agency":

- the Library of Congress
- the Botanic Garden
- the Government Printing Office
- the Office of the Architect of the Capitol, and
- the government of the District of Columbia.

Both sections define "positions" as the work, consisting of the duties and responsibilities, assignable to an employee. Section 5102 defines "grade" as including all classes of positions which, although different with respect to kind of subject-matter of work, are sufficiently equivalent as to the level of difficulty and responsibility and the level of qualification requirements of the work to warrant their inclusion within one range of rates of basic pay in the General Schedule. Section 5342 contains no definition of the term "grade."

Clause 3 defines "personal grade" as the employee's retained higher grade held prior to action which downgraded the position.

Clause 4 defines "scheduled rate of pay" as a rate of pay fixed by law or administrative action for a position or personal grade exclusive of all deductions and additions, including the exclusion of night differential, normally included as a part of basic pay.

Subsection (b) states that provisions of this amendment will apply to employees who have occupied their grade, or higher grades, for at least 52 weeks prior to downgrading caused by reclassification, reduction in force, or movement to a position in the General Schedule or in a prevailing rate system. Subparagraph (4) permits the Civil Service Commission to extend coverage of this subchapter to any other situation identified wherein agency accomplishment of mission would be facilitated.

Subsection (c) indicates that entitlement to grade or pay retention does not preclude an employee being separated by reduction in force or by adverse action. The subsection also states that as an exception to the bill's provisions a reduction in grade or pay can occur when the employee is reduced, for personal cause, at the employee's own request or as a condition of a temporary promotion.

Subsection (d) defines the conditions under which an employee may lose entitlement to application of these provisions: a break in service of one workday or more (separatees may not return to employment and retain eligibility for grade or pay retention); demotion, transfer, or reassignment for personal cause or at the employee's own request. Inasmuch as these represent conditions under which an employee may be initially denied grade and pay retention, they constitute bases for denial of their continuation as well. The subsection continues, listing two other valid reasons for discontinuance of these benefits: the employee becomes eligible for a rate of pay equal to or higher than that provided under grade and pay retention provisions (e.g., the position is upgraded, the employee receives a promotion in another field or with another agency) or the employee declines to accept the reasonable offer of a position whose rate of pay equals or exceeds that of his personal grade. It is anticipated that the Civil Service Commission in its regulations will specify that such refusal pertains to an offer only within the employee's agency, unless the CSC determines that a Government-wide placement program will be necessary, in which event the regulations will specify that refusal to accept any such offer will constitute grounds for loss of entitlement to continuing grade or salary retention.

SECTION 5373. KEY PROVISIONS

Section 5373 identifies the key provisions of the grade retention program. Subsection (a) explains the right of the employee to hold his previous grade as a personal grade, which is to be used for purposes such as pay setting, allowances and benefits, and establishing eligibility for training, promotion, and reassignment. Should an employee already holding a personal grade be affected by further reductions in force, he would compete according to his position assignment, but would continue to hold his personal grade even should assignment to a still lower graded position be required.

Subsection (b) empowers the Civil Service Commission to develop, implement, and enforce regulations to carry out the provisions of this subchapter. Although not limited in scope except by the general framework of the concept, such regulations may include the requirement for establishment of retraining programs within agencies for employees when it appears that their qualifications require improvement or broadening in order to achieve placement in positions equal to their personal grade level. This subsection also authorizes the Civil Service Commission to prescribe regulations governing the priority consideration to be given employees possessing personal grade for reassignment or transfer to positions commensurate with their personal grade levels. It is envisioned that the Civil Service Commission would develop and implement a program of enforced placement for these employees.

According to dictates of circumstances, such priority consideration may be restricted to the employee's agency or it may be broadened to include other Federal agencies. The CSC regulations will, however, require absolute priority consideration of employees on personal grades for appropriate vacant positions with documented, approved reasons for non-selection. The Civil Service Commission is authorized to monitor vacancies and if necessary, to direct placement in agencies. Procedures governing the termination of grade retention upon expiration of the authorized period will be provided in detail in CSC regulations.

Subsection (c) explains that if the employee has not attained a grade equal to or higher than his personal grade upon expiration of the two-year retention period, the personal grade shall terminate and the employee shall be placed in the grade of the position then occupied; simultaneously, the employee will be entitled to pay retention under later sections of this subchapter. The "position then occupied" will be the lower-graded position originally determined to be the correct position to which the employee is entitled whether through reclassification or reduction-in-force (reason for reduction-in-force is immaterial).

Section 5374 deals with pay retention, the follow-on action to grade retention. Subsection (a) explains the entitlements generally: an employee who has been eligible for grade retention, but whose period of grade retention has expired, shall be entitled to a rate of pay which is not less than the scheduled rate of pay of the personal grade.

Therefore, an employee with personal grade whose rate of pay may be accommodated within the rate range of the grade of the position to which downgraded will receive the appropriate step. These employees will receive the full amount of any future general increases in pay. For those whose rate of pay exceeds the maximum of the grade to which demoted, their rate of pay is limited to 150% of the top step of the grade to which assigned. Employees whose rate of pay exceeds the maximum step of the grade to which assigned shall be entitled to one-half of all future general increases in pay. In this way, such employees will be gradually phased back into the system; at the point when their pay, which has risen more slowly due to receipt of half-increases, is equalled or exceeded by the maximum step of the grade of the position which they occupy, the employees will be placed in that maximum step.

Subsection (b) authorizes the Civil Service Commission to prescribe regulations governing the selection of the rate of pay of the employee upon termination of the personal grade period. The regulations will deal with such situations in which the employee's rate of pay of the personal grade falls between two steps of the grade to which downgraded and computation of retained rates (those beyond the maximum step of the grade to which demoted).

The above guidance will be expanded in CSC regulations which are authorized by subsection (b).

Section 5375 deals with pay retention in situations other than those following grade retention. It specifies that the Civil Service Commission may prescribe regulations pertaining to pay retention for employees who are converted with their positions to the General Schedule or to a prevailing rate system, who move from one pay schedule to another within the prevailing rate systems, or who have had their special rates of pay reduced or eliminated. These provisions currently exist in law or Executive order.

Section 5376 eliminates the basis for employee adverse action appeals by stating that no action taken under the provisions of this subchapter may be considered an adverse action as defined in section 7511, title 5: "(2) 'adverse action' means a removal, suspension for more than 30 days, furlough without pay, or reduction in rank or pay." While this provision eliminates appeals from adverse actions, it does not abrogate the right of an employee to file a classification appeal at any time.

Section 5377 empowers the Civil Service Commission to issue regulations "necessary for the administration of this subchapter". Although this authorization is contained in other sections in which specific matters were mentioned, this provision is a general authority for the Commission to develop and implement regulations which may be required for unforeseen circumstances.

Paragraph 2 of this bill provides for the insertion of the new subchapter VII in the analysis of chapter 53. Those sections of law (specifically section 5334(d), section 5337, and section 5345) which provide for pay saving are repealed since these provisions of law would be in the new subchapter VII.

In addition, all references to "section 5337" in sections 5107, 5334(b), and 8704(d)(1) are to be replaced by inserting "subchapter VII of chapter 53"; and the reference to "paragraph (2) of section 5345(a)" is to be replaced by inserting "sections 5374 and 5375".

The second section of the bill states that the provisions of the Act are effective on the first day of the first applicable pay period which begins on or after the 90th day after enactment date. It also provides that no employee who is on a retained rate on the day before the date of enactment of the law will suffer a reduction or termination of his retained rate as a result of the passage of the Act.

STATEMENT OF PURPOSE AND JUSTIFICATION
OF
A Bill to amend title 5, United States
Code, to provide for grade and pay
retention for certain employees.

PURPOSE

In the Federal Government, as in other organizations with formalized job evaluation systems, it becomes necessary from time to time to change employees to a lower grade for reasons which are beyond their control and not for personal cause. Downgrades can occur when jobs are recognized as being overgraded because of misclassification, or when, because of consolidation, mission changes, staff reductions or reorganization, affected employees are placed at lower grades. Employees who face downgrading through no fault of their own now receive salary retention protection for a period of two years and are entitled to special consideration for repromotion.

There appears to be increasing support for the idea that employees whose jobs are determined to be overgraded because of poor agency classification practices ought to be permitted to retain those grades so long as they continue to hold their positions, with the positions reverting to proper grades when vacated. Similarly, employees affected by circumstances beyond their control, such as a reduction in force or transfer of function, may be "bumped" into a lower grade position through no fault of their own. The argument has been advanced that in both instances (downgrading due to reclassification or reduction in force caused by any factor) the Federal Government has broken its commitment to its employees by unilaterally reducing a grade attained and accepted in good faith in initial hiring or in a subsequent promotion.

Some Federal agencies are now engaged in very comprehensive classification review programs and based on an initial sampling, they anticipate that many Federal employees will be adversely affected by the results of their review. Additionally, it is strongly believed that employees should be assured that they will not be substantially harmed by the effects of anticipated reorganizations within the Federal Government. It seems clear that decreased employee morale and organizational disruption are the consequences of any threat of large scale employee downgradings.

The major objective of this bill is to improve the protections afforded to Federal employees faced with such downgrading actions. The bill provides for a temporary period of grade retention to the employees (two years), followed by indefinite salary retention, which together with attrition and reinforced efforts under Commission leadership to place employees in jobs commensurate with their grade level, should help keep the potential adverse impact of classification reviews and reorganization to a minimum. The bill would also bring together under one provision of law, all existing authorities to retain salary in various circumstances.

JUSTIFICATION

The draft bill provides that an employee involved in a downgrading action, who has been in grade, or at higher grades, for one year, would retain that grade (hereinafter referred to as "personal grade") for a period of two years and would thereafter be eligible for indefinite pay retention. During the two-year period of grade retention, the personal grade would be the grade of the employee for purposes such as pay setting, allowances and benefits, and determining eligibility for training, promotion, and reassignment as if the employee's position were still at that grade. Should an employee already holding a personal grade be affected by further reductions in force, he would compete according to his position assignment but would continue to hold his personal grade even should assignment to a still lower-graded position be required.

Currently, even though employees demoted due to reclassification or reduction in force are not entitled to retain their grades, they are in most cases eligible for two years' salary retention. However, in certain circumstances, such as reduction in force caused by lack of funds or curtailment of work, employees may be denied even salary retention. This bill would cover all reduction-in-force situations, thus eliminating different treatment which is perceived by some as creating real inequities.

In considering the arguments in favor of grade retention, it is necessary to strike a balance between concern with needs of employees and the interests of the Government as an employer. It is apparent that temporary grade retention followed as necessary by indefinite salary retention accomplishes this objective. Grade retention which is limited to a specific period of time will keep to a minimum any possibility of damage to the integrity of the Government's classification and pay systems. This built-in time limitation (two years) will serve as a self-corrective factor in the system, and as an incentive to managers as well as to downgraded employees to seek placement at their personal grade levels during that period.

It is envisioned that this combination of grade/salary retention would eliminate the basis for many employee appeals and grievances inasmuch as no adverse action is experienced by the employee at the time the position of the employee is reclassified. Following the grade retention period with the added benefit of salary retention for an indefinite period also minimizes the adverse effects on the employee occasioned by the reduction-in-grade action. The proposed legislation takes cognizance of these facts by specifying that neither of these actions constitutes an adverse action.

By eliminating the adverse impact of grade reductions under this greatly improved grade/salary retention program, and thus, the need for adverse action appeals, both employees and agencies will be freed from the burdens associated with those actions, with a hoped-for improvement in morale and productivity.

A classification appeal may be filed by an employee at any time, and this bill does nothing to abrogate that right. Moreover, strengthened agency efforts to place the employee during the two-year period at a position warranting the personal grade, retraining to enhance qualifications, and CSC efforts behind reassignment to a position commensurate with the employee's personal grade should decrease the number of employees significantly, who are actually downgraded at the end of the two-year period.

A major feature of the proposed legislation concerns agency efforts to reassign the employee to a position equal in grade to his personal grade. The bill authorizes the Civil Service Commission to prescribe regulations ensuring that employees receive every consideration for reassignment to positions for which they qualify which are equal in grade to their personal grade. This authority would extend not only to efforts of the agency, but would permit the CSC to develop and implement a program of placement Federal Government-wide, including directing employee placement.

Agencies may be required to provide retraining for employees in an effort to improve their qualifications and thus enhance their employment prospects within their own agencies or with others. The authority granted to the Commission in this respect is general, but it is envisioned that regulations would require the development and administration of training plans by the employing agency under the aegis of the Commission.

Presumably, the employee would be attempting to obtain placement at his personal grade level during the two-year retention period. Should he not be successful, however, and should agency and Commission efforts fail to achieve placement at the personal grade level, the temporary period of grade retention is followed with indefinite salary retention, so that the employee would not suffer any reduction in his existing rate of pay.

Upon assignment to the lower grade of the position occupied, the employee would be entitled to a continuing rate of pay not less than that of his personal grade, unless this rate exceeds one and one-half times the rate of the maximum step of the grade which he will now occupy, in which case, it will be adjusted to that amount. The bill would replace the cumbersome computation now required in actions which involve demotion in excess of three grades. The unwieldy formula currently prescribed for salary retention purposes has long been a source of complaints.

Employees whose rate of pay is above the maximum step of the grade of the position occupied upon termination of the grade retention period will be entitled to receive one-half of all subsequent general increases in pay. Under this plan, an employee's existing rate of pay will not be reduced and his pay will not be frozen; instead, he will continue to receive increases, albeit at a reduced rate during the entire period he is paid a retained rate. This method also provides the means for phasing the employee's retained rate of pay gradually back into the system; eventually, the maximum step of the grade to which the employee has been downgraded will equal or exceed the retained rate of pay, at which time the employee's rate of pay will be adjusted to that rate.

The bill also covers those other situations in which salary retention only is authorized. The movement of an employee with his position to the General Schedule or to a prevailing rate system is an action which occurs through no fault of the employee and pay retention is authorized in situations of this type. The bill stipulates that employees moving between pay schedules of prevailing rate systems and employees whose special rate of pay (established under section 5303 of title 5) has been reduced or eliminated, are eligible for pay retention under regulations to be issued by the Commission. The bill merely repeats benefits to which employees in these situations already are entitled under current regulations. This proposal also stipulates that the entitlements of employees now receiving pay retention would not be reduced or terminated.

It is envisioned that the form of temporary grade retention outlined in the draft legislation, followed by indefinite salary retention, would meet the immediate needs of agencies and would assist in the accomplishment of the forthcoming reorganization plans for the Federal Government.

THE WHITE HOUSE

WASHINGTON

June 23, 1977

Bert Lance
Z. Brzezinski
Frank Moore

Re: Reports to Congressional
Committee on Indochina Refugees

For your information the attached letters
were signed by the President and given to
Bob Linder for appropriate handling.

Rick Hutcheson

cc: Bob Linder



86/23/77

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 17 1977

ACTION

MEMORANDUM FOR:

THE PRESIDENT

FROM:

James McIntyre *James McIntyre*

SUBJECT:

Reports to Congressional
Committees on Indochina
Refugees

In accordance with the provisions of the Indochina Migration and Refugee Assistance Act of 1975, you are required to report to six committees of the Congress on the status of refugees from Cambodia and South Vietnam. The first report was transmitted on June 23, 1975, and seven supplementary reports were sent at ninety-day intervals from the date of the first report. The legislation requires one more quarterly report with a final report to be submitted no later than December 31, 1977. Your eighth supplementary report is due on or before June 20, 1977.

Attached is a draft transmittal letter to the six committee chairmen, highlights of the report, and copies of the supplementary report. The report was prepared by the Department of Health, Education and Welfare in cooperation with the public and private agencies that provide support to the Indochina refugee program. It describes the progress that has been made in assisting the Indochina refugee to become a self-sufficient member of American society. Also included is information on the retrieval of funds previously authorized and appropriated for assistance to South Vietnam and Cambodia but not expended.

I recommend that you transmit the report to the Congress on or before ~~June 20~~, 1977.

Attachment

Highlights of Report

- ° Total funds of \$555 million have been made available since the inception of this program in May 1975. Obligations of \$522 million have been incurred as of May 30, 1977 and \$33 million remain available through September 30, 1977.
- ° As of May 1, 1977, the percentage of refugees receiving at least part of their support from public cash assistance was 36%, an increase from the 35% reported for March 1, 1977. This percentage had held at approximately 30% for the latter half of 1976. Only 14% of refugee households are solely dependent on cash or other assistance.
- ° Employment estimates from a March-April 1977 survey indicate that 92% of the refugees 16 years or older in the labor force are employed. Refugee labor force participation, 63%, is comparable to that of the American population. Wage and salary income for employed refugees continues low, however, with 23% earning less than \$100/week.
- ° Forty refugee dentists and 482 physicians have undergone training programs at two dental schools and seven medical institutions. Dental students are awaiting results of examinations and 200 physicians have passed their examinations and are in practice or internship. Some 38 additional refugee dentists will begin training about July 1.
- ° English and vocational training projects (62) are in operation in 39 States and Guam at a total cost of \$7 million. As of March 31, there have been 3,060 job placements reported by the projects.
- ° Legislation is pending in Congress (H.R. 2051, H.R. 6771, S.694) to adjust refugee immigration status from parolee to permanent resident alien. Passage would open new employment and educational opportunities for refugees and be the first step toward citizenship. The change in immigration status would allow refugees to enlist in the U.S. Armed Services.
- ° Some special problems of refugees are (1) reunification with family members still in Indochina or in other countries, (2) underemployment, and (3) assimilation into U.S. society of 6,000 H'mong tribesmen from rural Laos. Though not measured at this time, internal migration of refugees within the U.S. is taking place.

THE WHITE HOUSE

WASHINGTON

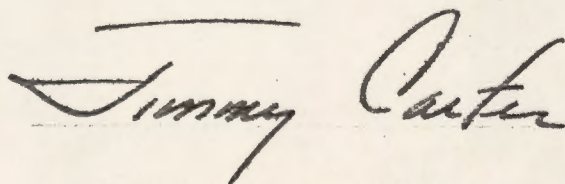
To Chairman James Eastland

In accordance with the provisions of the Indochina Migration and Refugee Assistance Act of 1975, I am reporting to you on the status of refugees from Cambodia and South Vietnam.

We continue to make progress in assisting the Indochina refugee to become a self-sufficient member of his new community. Refugee employment rates are very encouraging. Income levels, however, are low and income supplementation through cash assistance programs is relatively high. Professional certification, English language proficiency, and the development of marketable job skills are approaches being used to improve the employment position of the refugee. Passage of legislation to adjust refugee immigration status from parolee to permanent resident alien will assist in opening new employment and educational opportunities for the refugee.

I want to thank the many individual families and public and private institutions that contribute so generously to this program. With their assistance, we draw near to a successful conclusion of this humanitarian effort.

Sincerely,

A handwritten signature in dark ink, reading "Jimmy Carter". The signature is written in a cursive style with a horizontal line above the first name.

The Honorable James O. Eastland
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE
WASHINGTON

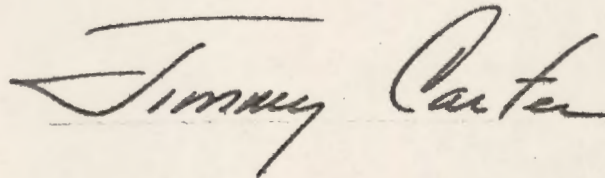
To Chairman Peter Rodino

In accordance with the provisions of the Indochina Migration and Refugee Assistance Act of 1975, I am reporting to you on the status of refugees from Cambodia and South Vietnam.

We continue to make progress in assisting the Indochina refugee to become a self-sufficient member of his new community. Refugee employment rates are very encouraging. Income levels, however, are low and income supplementation through cash assistance programs is relatively high. Professional certification, English language proficiency, and the development of marketable job skills are approaches being used to improve the employment position of the refugee. Passage of legislation to adjust refugee immigration status from parolee to permanent resident alien will assist in opening new employment and educational opportunities for the refugee.

I want to thank the many individual families and public and private institutions that contribute so generously to this program. With their assistance, we draw near to a successful conclusion of this humanitarian effort.

Sincerely,

A handwritten signature in dark ink, reading "Jimmy Carter". The signature is written in a cursive, flowing style. The first name "Jimmy" is written with a large, sweeping initial "J". The last name "Carter" is written with a large, sweeping initial "C". The signature is positioned in the center of the page, below the word "Sincerely,".

The Honorable Peter W. Rodino
Chairman
House Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

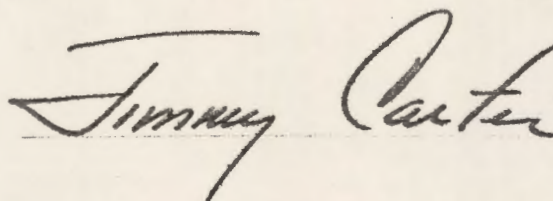
To Chairman John Sparkman

In accordance with the provisions of the Indochina Migration and Refugee Assistance Act of 1975, I am reporting to you on the status of refugees from Cambodia and South Vietnam.

We continue to make progress in assisting the Indochina refugee to become a self-sufficient member of his new community. Refugee employment rates are very encouraging. Income levels, however, are low and income supplementation through cash assistance programs is relatively high. Professional certification, English language proficiency, and the development of marketable job skills are approaches being used to improve the employment position of the refugee. Passage of legislation to adjust refugee immigration status from parolee to permanent resident alien will assist in opening new employment and educational opportunities for the refugee.

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Sincerely,

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The Honorable John J. Sparkman
Chairman
Senate Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

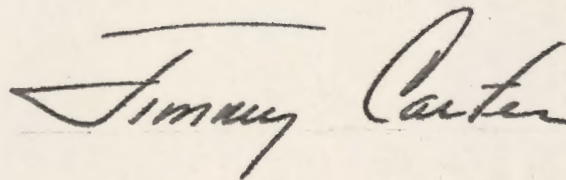
To Chairman Clement Zablocki

In accordance with the provisions of the Indochina Migration and Refugee Assistance Act of 1975, I am reporting to you on the status of refugees from Cambodia and South Vietnam.

We continue to make progress in assisting the Indochina refugee to become a self-sufficient member of his new community. Refugee employment rates are very encouraging. Income levels, however, are low and income supplementation through cash assistance programs is relatively high. Professional certification, English language proficiency, and the development of marketable job skills are approaches being used to improve the employment position of the refugee. Passage of legislation to adjust refugee immigration status from parolee to permanent resident alien will assist in opening new employment and educational opportunities for the refugee.

I want to thank the many individual families and public and private institutions that contribute so generously to this program. With their assistance, we draw near to a successful conclusion of this humanitarian effort.

Sincerely,

A handwritten signature in dark ink, reading "Jimmy Carter". The signature is written in a cursive, flowing style with a large, sweeping "J" and "C".

The Honorable Clement J. Zablocki
Chairman
House Committee on International Relations
U.S. House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE
WASHINGTON

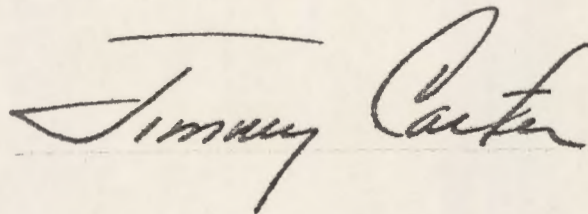
To Chairman John McClellan

In accordance with the provisions of the Indochina Migration and Refugee Assistance Act of 1975, I am reporting to you on the status of refugees from Cambodia and South Vietnam.

We continue to make progress in assisting the Indochina refugee to become a self-sufficient member of his new community. Refugee employment rates are very encouraging. Income levels, however, are low and income supplementation through cash assistance programs is relatively high. Professional certification, English language proficiency, and the development of marketable job skills are approaches being used to improve the employment position of the refugee. Passage of legislation to adjust refugee immigration status from parolee to permanent resident alien will assist in opening new employment and educational opportunities for the refugee.

I want to thank the many individual families and public and private institutions that contribute so generously to this program. With their assistance, we draw near to a successful conclusion of this humanitarian effort.

Sincerely,

A handwritten signature in dark ink, reading "Jimmy Carter". The signature is written in a cursive style with a horizontal line above the first name.

The Honorable John L. McClellan
Chairman
Senate Committee on Appropriations
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

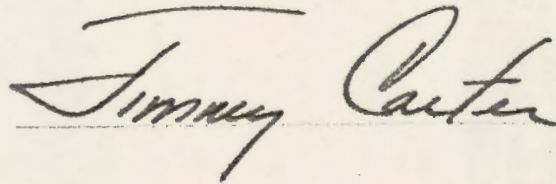
To Chairman George Mahon

In accordance with the provisions of the Indochina Migration and Refugee Assistance Act of 1975, I am reporting to you on the status of refugees from Cambodia and South Vietnam.

We continue to make progress in assisting the Indochina refugee to become a self-sufficient member of his new community. Refugee employment rates are very encouraging. Income levels, however, are low and income supplementation through cash assistance programs is relatively high. Professional certification, English language proficiency, and the development of marketable job skills are approaches being used to improve the employment position of the refugee. Passage of legislation to adjust refugee immigration status from parolee to permanent resident alien will assist in opening new employment and educational opportunities for the refugee.

I want to thank the many individual families and public and private institutions that contribute so generously to this program. With their assistance, we draw near to a successful conclusion of this humanitarian effort.

Sincerely,

A handwritten signature in dark ink, reading "Jimmy Carter". The signature is written in a cursive, flowing style. The first name "Jimmy" is written with a large, sweeping "J" and "i". The last name "Carter" is written with a large, sweeping "C" and "a". The signature is positioned below the word "Sincerely," and is underlined.

The Honorable George H. Mahon
Chairman
House Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE
WASHINGTON

June 23, 1977

Hamilton Jordan -

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

Re: Assistant Attorney General
for Anti-Trust
John Shenefield

THE WHITE HOUSE
WASHINGTON

ACTION	FYI		
		MONDALE	ENROLLED BILL
		COSTANZA	AGENCY REPORT
		EIZENSTAT	CAB DECISION
X		JORDAN	EXECUTIVE ORDER
		LIPSHUTZ	Comments due to
		MOORE	Carp/Huron within
		POWELL	48 hours; due to
		WATSON	Staff Secretary
			next day

	FOR STAFFING
	FOR INFORMATION
X	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

	ARAGON		KRAFT
	BOURNE		LANCE
	BRZEZINSKI		LINDER
	BUTLER		MITCHELL
	CARP		POSTON
	H. CARTER		PRESS
	CLOUGH		B. RAINWATER
	FALLOWS		SCHLESINGER
	FIRST LADY		SCHNEIDERS
	GAMMILL		SCHULTZE
	HARDEN		SIEGEL
	HOYT		SMITH
	HUTCHESON		STRAUSS
	JAGODA		WELLS
X	KING		VOORDE

THE WHITE HOUSE
WASHINGTON

June 22, 1977

THE PRESIDENT HAS SEEN.

MEMORANDUM FOR THE PRESIDENT

FROM:

HAMILTON JORDAN

H.J.

SUBJECT:

ASSISTANT ATTORNEY GENERAL FOR ANTITRUST

Judge Bell is recommending the appointment of John Shenefield as Assistant Attorney General in charge of the Antitrust. This would be a good appointment. Counsel's office (Lipshutz) concurs, as does Tim Smith and others. Judge Bell has already received Senator Kennedy's approval, and the consumers groups do not object.

I recommend therefore that you approve John Shenefield for nomination as Assistant Attorney General for Antitrust.

APPROVE

☒

DISAPPROVE

Attachment

JC

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for Preservation Purposes



Office of the Attorney General
Washington, D. C. 20530

June 21, 1977

MEMORANDUM TO THE PRESIDENT:

John Shenefield has been Acting Assistant Attorney General in charge of the Antitrust Division for the past six weeks. I am satisfied with his performance and would like to have him nominated to be Assistant Attorney General of that division on a permanent basis.

I attach a biographical sketch on John. I have in my file a long letter from Justice Lewis Powell in which he states that John is perhaps the finest lawyer ever recruited by him in his practice. John was a partner in Justice Powell's firm in Richmond and headed the antitrust unit in the firm which was comprised of 21 lawyers.

Senator Kennedy is impressed with John and suggested that he would be glad to handle his nomination in the Senate. In addition, John is known to the Nader group and they advise that they do not object to the appointment. Congressman Rodino is also satisfied with the appointment.

This is a sensitive post and any appointment may set off a controversy. However, I am satisfied that John is an excellent choice, and one that can be justified on the merits as well as from the standpoint of an appointment which will facilitate your policies.

Kindly let me know if this appointment meets with your approval.

Respectfully,

Griffin B. Bell

Griffin B. Bell
Attorney General

Enclosure

Summary of Experience

JOHN H. SHENEFIELD

Professional

Present Position: Acting Assistant Attorney General
Antitrust Division
Department of Justice

Previous Position: Member of Hunton & Williams,
Richmond, Virginia and
Washington, D.C., 1971-1977
(in charge of antitrust)
(associated with firm 1965-1971)

Admitted to Virginia and District of Columbia Bars
Admitted to practice before
the United States Supreme Court

Education: A.B. Harvard College (1960)
LL.B. Harvard Law School (1965)

Adjunct Associate Professor of Law, University of
Richmond Law School (1975-1977)
(teaching course entitled
Economic Regulation)

Member, Advisory Boards of The Antitrust Bulletin and
The Journal of Reprints for
Antitrust Law and Economics

JOHN H. SHENEFIELD

Publications:

"Annual Survey of Antitrust Developments 1975-76," 34 Washington & Lee Law Review 7 (1977) (co-author)

"Book Review: Twenty-Five Years of Antitrust," (to be published)
XX Antitrust Bulletin

"Regulation and De-Regulation: Where Do We Stand?" (to be published) 45 Antitrust Law Journal; excerpted, Public Utilities Fortnightly, Oct. 7, 1976 issue

"Annual Survey of Antitrust Developments -- 1975" 33 Washington & Lee Law Review (1976)

"An Introduction to Section One of the Sherman Act for the General Practitioner," The Virginia Bar Assn. Journal, April 1975

"Annual Survey of 1973-74 Antitrust Developments -- A New Trend Toward Neutrality" 32 Washington & Lee Law Review 299 (1975)

"Annual Survey of Antitrust Developments -- The Year of the Regulated Industry," 31 Washington & Lee Law Review 1 (1974)

"Book Review: The Closed Enterprise System," 51 Texas Law Review 813 (1973)

"A Survey of the Antitrust Law of Exclusive Agreements," 6 University of Richmond Law Review 225 (1972)

"Antitrust Policy Within the Electric Utility Industry," XVI Antitrust Bulletin 681 (1971)

JOHN H. SHENEFIELD

Lecturer and speaker at seminars and symposia on various topics including anti-trust, economic regulation, and politics

Bar Activities: Member, American, Virginia and District of Columbia Bar Associations

Chairman, Industry Regulation Committee, Antitrust Section, ABA (1976-1977)

Chairman, Fuels and Energy Subcommittee, Antitrust Section, ABA (1974-1976)

Commissions: Member of 1974 Virginia Commission to Revise Virginia Antitrust Laws (which wrote new Virginia antitrust statute)

Political

Chairman, Carter for President Campaign, Richmond, Virginia, 1976 general election (committed approximately March 1; Carter supporter at city mass meetings April 3; Carter delegate Third Congressional District Convention [elected convention chairman]; appointed as member, Virginia Citizens Finance Committee for Carter, July 6; alternate delegate for Carter, Democratic National Convention in July)

JOHN H. SHENEFIELD

Political

Chairman, Richmond City Democratic Committee
(December 29, 1975-1977);
Member of Richmond City
Democratic Committee (1968-1977);
Secretary (1969-1970)

Secretary, Virginia Democratic Party (1970-1972)

Member, Third Congressional District Committee
(1976 - present)

Treasurer, Virginia Democratic Party (1976-1977)

Other Community Service

Director, Neighborhood Legal Aid Society, (1972-1977)

Director, Richmond Community Action Program
(1970-1972)

President, Harvard Club of Virginia (1970-1972)
Director (1970-present)

Chairman, Harvard College Schools Committee for
Virginia (member 1968-1977)

Past Employment Experience

Teaching Fellow in General Education, Harvard College,
Constitutionalism in America
(1963-1965)

Head Resident, Wyeth Hall, Harvard University
(1963-1965)

Member, Research Staff, Rule of Law Research Center,
Duke University, Research project
on constitutional law of racial
relations (summer, 1964)

JOHN H. SHENEFIELD

Past Employment Experience

Military Service (March 1961 - September 1962)
below

Clerk, Covington & Burling, Washington, D.C.
(September 1960 - March 1961)

Public Information Office, Internal Revenue Service
(Author of History of the Internal
Revenue Service, published by the
Government Printing Office, 1960)
(summers, 1959, 1960)

Federal Communications Commission (summer, 1958)

Library of Congress, Presidential Papers staff,
• Manuscripts Division (summers,
1956, 1957)

Military Experience: Commissioned Second Lieutenant,
U.S. Army Reserve, 1960 (R.O.T.C.
Harvard); promoted First Lieutenant
(1963), Captain (1967). Clearance:
Top Secret (as of approx. 1966)

Personal Data

Born January 23, 1939 in Toledo, Ohio

Married Anna B. Larson, of Washington, D.C. and
Durham, North Carolina

Have two children



Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, MAY 4, 1977

AT
202-739-2014

Attorney General Griffin B. Bell today announced the appointment of John H. Shenefield as Acting Assistant Attorney General in charge of the Antitrust Division, effective May 9.

Mr. Shenefield, 38, of Richmond, Virginia, was named Deputy Assistant Attorney General of the Antitrust Division April 4.

He replaces Assistant Attorney General Donald I. Baker, who resigned effective May 8.

"I am naming Mr. Shenefield to head the Division until a permanent successor is chosen," Mr. Bell said, "because I have the highest regard for his judgment and ability. He is among those we are considering for recommendation to the White House as a candidate to head the Antitrust Division on a more permanent basis."

An Assistant Attorney General requires nomination by the President and confirmation by the Senate.

"Mr. Baker has served with distinction," Mr. Bell said. "He came to the Division in 1966 as a career attorney, and rose to the position of Deputy Assistant Attorney General

(MORE)

In 1974 he was a member of the Commission to Revise Virginia's Antitrust Laws, and helped author the statute that was passed that year.

He has been a lecturer on antitrust and economic regulation, and has written a number of articles on antitrust, including an annual review of antitrust developments for the Washington and Lee Law Review. He is also a member of the advisory boards of the Antitrust Bulletin and the Journal of Reprints for Antitrust Law and Economics.

He lives with his wife, Anna Larson Shenefield, and two sons, Stephen, 13 and Christopher, eight, in Richmond.

#

THE WHITE HOUSE

WASHINGTON

June 23, 1977

Charlie Schultze
Stu Eizenstat
Frank Moore
Jack Watson

Re: Humphrey-Hawkins ---
Meeting with Speaker O'Neill

The attached was returned in the President's
outbox and is forwarded to you for appropriate
action.

Rick Hutcheson

THE WHITE HOUSE
WASHINGTON

ACTION	FYI		
		MONDALE	ENROLLED BILL
		COSTANZA	AGENCY REPORT
X		EIZENSTAT	CAB DECISION
		JORDAN	EXECUTIVE ORDER
		LIPSHUTZ	Comments due to
X		MOORE	Carp/Huron within
		POWELL	48 hours; due to
X		WATSON	Staff Secretary
			next day

	FOR STAFFING
	FOR INFORMATION
X	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	GAMMILL
	HARDEN
	HOYT
	HUTCHESON
	JAGODA
	KING

	KRAFT
	LANCE
	LINDER
	MITCHELL
	POSTON
	PRESS
	B. RAINWATER
	SCHLESINGER
	SCHNEIDERS
X	SCHULTZE
	SIEGEL
	SMITH
	STRAUSS
	WELLS
	VOORDE

THE WHITE HOUSE
WASHINGTON

Mr. President:

Eizenstat and Moore concur.

Blumenthal has no objection.

Rick

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

June 22, 1977

THE PRESIDENT HAS SEEN.

MEMORANDUM FOR THE PRESIDENT

FROM: Charlie Schultze **CLS**
SUBJECT: Humphrey-Hawkins -- Meeting with
Speaker O'Neill

Frank Moore, Stu Eizenstat and I met with Speaker O'Neill on Tuesday afternoon to discuss the Humphrey-Hawkins Bill.

I outlined the major areas in the bill that gave us trouble, but said that we could accommodate the spirit of the bill and a good bit of its framework in a rewritten version.

The Speaker said that he didn't believe the bill could pass in its present form. But he also said that he hoped we could find some way to reach an agreement with Humphrey and Hawkins to avoid a bloody fight.

He suggested that our next step should be to draft a detailed outline of a bill acceptable to the Administration, retaining as much as possible of the existing bill. He also suggested that we make our initial draft "tougher" than our final position to leave room for later compromise. After first trying to get Senator Humphrey on board we should then approach Congressman Hawkins with the new version. Even if this failed, he thought we would have demonstrated our good will. Finally, the Speaker said that no matter what happened there was no room on the House calendar for such a major bill this year. Hearings, of course, could be held.

I propose that we proceed along the line he suggested:

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for Preservation Purposes**

- . CEA and the Domestic Council will prepare a detailed outline of a new bill, and clear it through the EPG.
- . After your approval, we will try it out on Senator Humphrey and then on Congressman Hawkins.
- . If they are willing to accept the new bill, obviously after some negotiations on language, we will have avoided a major fight; and have a bill we can live with.
- . If they do not agree, then we could have our bill introduced, and let Hawkins' subcommittee hold hearings on the two bills. Even with the disagreement, our position would be a positive one, and not purely negative.

Agree ☒ _____

Disagree ☐ _____

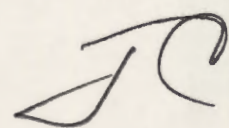
See me ☐ _____

You now have pending a joint request from Senator Humphrey and Congressman Hawkins to meet with them and a group of outside supporters to discuss the bill. I suggest that Stu tell them we are preparing a specific set of suggestions which we will discuss with them immediately after the July 4 recess, and that we postpone your meeting with them. I also suggest that the Administration avoid any public comment on this process until after the next round of discussions with Humphrey and Hawkins.

Approve ☒ _____

Disapprove ☐ _____

See me ☐ _____



RETURN THIS RECEIPT IMMEDIATELY TO

REGISTRY NO.

**Rick Hutcheson
White House**

UNCLASSIFIED DESCRIPTION
(Serial No., File No., Subject)

DATE

6/23/77

Federal Education Activities

INCLOSURES

ADDRESSEE

**The Honorable Joseph Califano
Secretary of HEW
Washington, D. C. 20230**

Receipt for communication(s) described above is hereby acknowledged by:

ADDRESSEE'S SIGNATURE

DATE RECEIVED

John W. Gurnea, Jr. Asst. to Secy.

TO BE RETURNED TO THE WHITE HOUSE OFFICE

CLASSIFIED MATERIAL RECEIPT

16-70489b-1 GPO

THE WHITE HOUSE

WASHINGTON

June 23, 1977

~~CONFIDENTIAL~~

The Vice President
Secretary Califano
Stu Eizenstat
Hamilton Jordan
Jack Watson
Bert Lance

Re: Reorganization of Federal
Education Activities

The attached was returned in the President's
outbox and is forwarded to you for your
information and appropriate action.

Rick Hutcheson

"DETERMINED TO BE AN ADMINISTRATIVE MARKING
CANCELLED FOR E.O. 12958, SEC. 1.3 AND
ARCHIVIST'S ORDER OF MARCH 16, 1993"

THE WHITE HOUSE

WASHINGTON

cc Calif 1/10/80

confidential

ACTION
FYI

<input checked="" type="checkbox"/>	MONDALE
<input type="checkbox"/>	COSTANZA
<input checked="" type="checkbox"/>	EIZENSTAT
<input checked="" type="checkbox"/>	JORDAN
<input type="checkbox"/>	LIPSHUTZ
<input type="checkbox"/>	MOORE
<input type="checkbox"/>	POWELL
<input checked="" type="checkbox"/>	WATSON

<input type="checkbox"/>	ENROLLED BILL
<input type="checkbox"/>	AGENCY REPORT
<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER

Comments due to
Carp/Huron within
48 hours; due to
Staff Secretary
next day

<input type="checkbox"/>	FOR STAFFING
<input type="checkbox"/>	FOR INFORMATION
<input checked="" type="checkbox"/>	FROM PRESIDENT'S OUTBOX
<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
<input type="checkbox"/>	IMMEDIATE TURNAROUND

<input type="checkbox"/>	ARAGON
<input type="checkbox"/>	BOURNE
<input type="checkbox"/>	BRZEZINSKI
<input type="checkbox"/>	BUTLER
<input type="checkbox"/>	CARP
<input type="checkbox"/>	H. CARTER
<input type="checkbox"/>	CLOUGH
<input type="checkbox"/>	FALLOWS
<input type="checkbox"/>	FIRST LADY
<input type="checkbox"/>	GAMMILL
<input type="checkbox"/>	HARDEN
<input type="checkbox"/>	HOYT
<input type="checkbox"/>	HUTCHESON
<input type="checkbox"/>	JAGODA
<input type="checkbox"/>	KING

<input type="checkbox"/>	KRAFT
<input checked="" type="checkbox"/>	LANCE
<input type="checkbox"/>	LINDER
<input type="checkbox"/>	MITCHELL
<input type="checkbox"/>	POSTON
<input type="checkbox"/>	PRESS
<input type="checkbox"/>	B. RAINWATER
<input type="checkbox"/>	SCHLESINGER
<input type="checkbox"/>	SCHNEIDERS
<input type="checkbox"/>	SCHULTZE
<input type="checkbox"/>	SIEGEL
<input type="checkbox"/>	SMITH
<input type="checkbox"/>	STRAUSS
<input type="checkbox"/>	WELLS
<input type="checkbox"/>	VOORDE



THE PRESIDENT HAS SEEN.

THE VICE PRESIDENT
WASHINGTON

June 22, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: THE VICE PRESIDENT *WJ*

SUBJECT: REORGANIZATION OF FEDERAL EDUCATION
ACTIVITIES

The attached memorandum provides a joint recommendation from Bert Lance, Joe Califano, Stu and me on reorganization of education functions.

Were it not for the reservations expressed by Joe Califano and the OMB Reorganization Group, I would be inclined to recommend a decision now for a separate education department for the following reasons:

- The NEA and other "Big Six" education groups (but not the A.F.T.) are convinced that a separate department is the best way to elevate the federal priority for education.
- We specifically supported that position and, in part on that basis, received the first NEA endorsement ever given a Presidential and Vice Presidential candidate.
- A separate department is strongly supported by Senator Ribicoff (Chairman of the Government Operations Committee) and Senator Pell (Chairman of the Human Resources Committee's Subcommittee on Education). Substantial work has gone into their bill, which has near majority cosponsorship in the Senate.

Memorandum for the President

Page Two

June 22, 1977

- An extensive administration review of other options will be seen as a major retreat from our campaign pledge. It will create a serious problem for the NEA leadership who convinced their members to work for us during the campaign.
- Because of budget constraints, there may not be much we can offer education and its advocates, except fulfillment of our campaign pledge for a separate department.

Despite these considerations, I believe that Joe Califano and the OMB Reorganization Group make a strong case for careful study. I therefore concur in the joint recommendation for a 6-month study with a preliminary decision round in August.

I understand that Stu agrees with this assessment.

ok
J

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for Preservation Purposes**

THE WHITE HOUSE

WASHINGTON

June 22, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

THE VICE PRESIDENT

BERT LANCE

JOE CALIFANO

STU EIZENSTAT

SUBJECT:

Reorganization of Federal Education Activities

Last week, after preliminary staff analysis, we met as you requested to discuss the options regarding the campaign commitment to a separate Cabinet level department of education.

We explored: 1) the implications of creating a new education department for the overall reorganization, 2) the possibilities for acceleration of OMB's reorganization schedule for education functions, and 3) potential reaction among education groups and Members of Congress to an extensive review process.

We reached the following conclusions:

- A thorough study of reorganization options for HEW (including similar functions located elsewhere in government) is needed. A decision with respect to education should not be divorced from this broader analysis.

- A relatively early decision on the major structural questions (e.g. breaking HEW up into one or more separate Departments, a "DOD" model with Departments of Health, Education and Income Security, a consolidation of health, education and welfare programs within the department as presently structured, or other innovative approaches) is important, in view of mounting Congressional and constituency pressures.

- A drawn-out review process will provide added time and incentive for interested constituencies to mount a major lobbying campaign. This will

include hearings and pressure for passage of Senator Ribicoff's bill to create a separate Education Department (44 cosponsors in the Senate). It will also intensify efforts on behalf of other measures to fragment human services functions, including Senator Church's proposal to create an independent Social Security Board (21 cosponsors), and legislation Senator Mathias intends to introduce for a separate Department of Health.

- To ignore these constituencies and Members of Congress pending prolonged Administration review could result in major controversy over the HEW reorganization plan next year.
- On the other hand, failure to fully explore all available options and all candidates for transfer of programs can weaken the final result.

Recommendation

In our view the best way to avoid mounting constituency and Congressional pressure -- which would tend to narrow and limit the Administration's freedom of decision -- is to move as promptly as we responsibly can. We therefore recommend:

- First, a five week study of overall organizational options for HEW strongly emphasizing the need to consolidate functions currently located elsewhere in the government. Members of this task force would take part in the review.

At the end of this five week study, a preliminary round of decisions would be made, including a decision on whether to proceed with a separate Department of Education in some form or to pursue another option.

- Second, following this decision, intensive consultation on detailed options would continue, with a target date to be set by the Reorganization Group.

Advantages

We believe this approach has the following advantages:

- It will permit an objective study to assess the merit of alternative options before affected interest groups become over committed to their own preferred options.
- In the event the study shows significant substantive advantages to an approach other than a separate education department, it will permit us to announce and put that decision behind us and cooperate with affected groups on the next order of decisions -- how best to implement the Administration's alternatives. There will be a strong incentive for the constituencies to work closely with us and to develop more supportive positions.
- It will help to decouple the education department issue from the FY 79 budget decisions (if we do not clear the air, Congressional and constituent pressure for a separate department will increase as the January budget announcement and the 1978 Congressional elections near.)

Alternatives

- One alternative would be to undertake a 6-month study, deferring basic decisions until its completion in December. If there were no legislative considerations, OMB's Reorganization Project would prefer this approach.
- A second alternative would be to commit now to a separate Cabinet-level Department of Education and proceed with a study directed toward potential candidates for inclusion. In the absence of strong concern on the part of HEW and OMB's Reorganization Group, the Vice President would have preferred this approach.

Decision

_____ Commit now to separate Cabinet-level Department of Education.

✓ _____ Undertake 6-month study with preliminary decision round in August (recommended).

_____ Undertake 6-month study with decision round in December.

_____ Discuss



CALIFANO ATTACHMENT

- The budgetary control problems, particularly in Health and Education, would be even more difficult to handle than they are now.
- In the education area, the NEA and teacher interests would likely control a Department of Education. (That conclusion helps explain why the American Federation of Teachers and virtually all college and university presidents oppose such a department.)
- Organized health interests would soon control a Department of Health.
- The aging constituencies, which get more powerful each year, would eventually take a commanding position in a Department of Income Security, because the Social Security Administration would dominate such a Department.
- The various interest groups (e.g., for rehabilitation services, children) would seek and in some cases obtain independent agency status for their administrations that now are in one of the HEW operating divisions.
- Fragmented organizations will enhance Congressional control (its own Committee structure is fragmented) at the expense of Presidential control.

If re-organization along these lines takes place, virtually every significant domestic social policy decision would require a Cabinet-level committee or meeting of some kind. What we need in the domestic area is less, not more fragmentation. As you know, this is the organizational route the states are travelling, and this is also the direction in which we should move.

When an analysis and study of further HEW re-organization is complete, I believe an umbrella organizational model, with a strong central staff to provide presidential policy direction and control, is likely to make the most sense for a variety of reasons. A Cabinet-level Department of Human Resources, with sub-Cabinet departments for education, health, income security and social services, would be one organizational structure aimed at achieving strong presidential control.

A Strategy.

Despite my view on the merits, I recognize, of course, that there are very difficult political problems involved in a decision on the Department of Education in view of your campaign speeches.

Since the problem is not going to get any easier, it makes sense, therefore, to get an adverse decision about a separate Department out of the way. If you do not make that decision quickly -- and decide to proceed tentatively under a broad umbrella reorganization concept -- then you and I will feel constant centripetal political pressure to spin off all sorts of departments and agencies, not just a Department of Education, on an independent basis.

I suggest, therefore, a quick study of the Education Department concept. The study would make certain you understood the pros and cons, substantive and political, of this concept. If at the end of that study you decide to reject it -- as I think everyone in the government will -- then we can make that fact known promptly.

If we do not dispose of the Department of Education idea but continue to consider it as a leading option over the course of a lengthy study of the organization of the education, health, cash payments and social service programs throughout the federal government, we will have serious organization and management problems for an extended period of time. The long run kind of study needed carries with it the potential to release all the latent ambitions of the special interest groups that now sit within HEW. All those interests will seek independent institutional status.

It is essential that both studies be done with great sensitivity to the importance of maintaining and enhancing the management and control of HEW by me and your top appointees here.

A final note: We are just this week putting in place the final piece of the large reorganization of HEW which I announced with your approval in March. It involved the movement of almost 16,000 employees and \$58 billion in programs. This process has been traumatic and will continue to be so for the next several months, with the nagging union, personnel and management problems that inevitably attend such massive moves. To move too quickly and without great sensitivity with another HEW re-organization will severely impair institutional and employee productivity and morale and could be chaotic in some programmatic areas in terms of the delivery of services.

THE WHITE HOUSE
WASHINGTON

June 23, 1977

Stu Eizenstat
Frank Moore

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

Re: Analysis of Senate Committee
Action on Water Projects

THE WHITE HOUSE
WASHINGTON

Supplemental

ACTION
FYI

<input checked="" type="checkbox"/>	MONDALE
<input type="checkbox"/>	COSTANZA
<input type="checkbox"/>	EIZENSTAT
<input checked="" type="checkbox"/>	JORDAN
<input type="checkbox"/>	LIPSHUTZ
<input checked="" type="checkbox"/>	MOORE
<input type="checkbox"/>	POWELL
<input checked="" type="checkbox"/>	WATSON

<input type="checkbox"/>	ENROLLED BILL
<input type="checkbox"/>	AGENCY REPORT
<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER

Comments due to
Carp/Huron within
48 hours; due to
Staff Secretary
next day

<input checked="" type="checkbox"/>	FOR STAFFING
<input type="checkbox"/>	FOR INFORMATION
<input type="checkbox"/>	FROM PRESIDENT'S OUTBOX
<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
<input checked="" type="checkbox"/>	IMMEDIATE TURNAROUND

<input type="checkbox"/>	ARAGON
<input type="checkbox"/>	BOURNE
<input type="checkbox"/>	BRZEZINSKI
<input type="checkbox"/>	BUTLER
<input type="checkbox"/>	CARP
<input type="checkbox"/>	H. CARTER
<input type="checkbox"/>	CLOUGH
<input type="checkbox"/>	FALLOWS
<input type="checkbox"/>	FIRST LADY
<input type="checkbox"/>	GAMMILL
<input type="checkbox"/>	HARDEN
<input type="checkbox"/>	HOYT
<input type="checkbox"/>	HUTCHESON
<input type="checkbox"/>	JAGODA
<input type="checkbox"/>	KING

<input type="checkbox"/>	KRAFT
<input type="checkbox"/>	LANCE
<input type="checkbox"/>	LINDER
<input type="checkbox"/>	MITCHELL
<input type="checkbox"/>	POSTON
<input type="checkbox"/>	PRESS
<input type="checkbox"/>	B. RAINWATER
<input type="checkbox"/>	SCHLESINGER
<input type="checkbox"/>	SCHNEIDERS
<input type="checkbox"/>	SCHULTZE
<input type="checkbox"/>	SIEGEL
<input type="checkbox"/>	SMITH
<input type="checkbox"/>	STRAUSS
<input type="checkbox"/>	WELLS
<input type="checkbox"/>	VOORDE

THE WHITE HOUSE
WASHINGTON

ACTION	FYI		
		MONDALE	ENROLLED BILL
		COSTANZA	AGENCY REPORT
	X	EIZENSTAT	CAB DECISION
		JORDAN	EXECUTIVE ORDER
		LIPSHUTZ	Comments due to
	X	MOORE	Carp/Huron within
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	KING		VOORDE

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

June 20, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

STU EIZENSTAT

SUBJECT:

Analysis of Senate Committee Action
on Water Projects

The Senate Appropriations Subcommittee has deleted 9 water projects and curtailed a tenth in response to your recommendations and to the Administration's very strong showing June 13 on the House floor. Following is an analysis of their action:

Deleted and Curtailed Projects

	<u>Original Budget</u>	<u>Your Recommendation</u>	<u>House Bill</u>	<u>Senate Bill</u>
1. Grove Lake, Kan.	\$1,000,000	0	0	0
2. LaFarge Lake, Wis.	2,000,000	0	\$2,000,000	0
3. Lukfata Lake, Okla.	200,000	0	200,000	0
4. Meramec Park Lake, Mo.	10,000,000	0	10,000,000	0
5. Yatesville Lake, KY	7,200,000	0	7,200,000	0
6. Fruitland Mesa, Colo.	7,702,000	0	7,702,000	0
7. Savery-Pot Hook, Colo. And Wyoming	5,992,000	0	5,992,000	0
8. Narrows Unit, Colo.	9,700,000	0	9,700,000	0
9. Oahe Unit, S.Dak.	16,960,000	0	16,960,000	0
10. Bayou Bodcau, La.	<u>2,400,000</u>	<u>0</u>	<u>2,400,000</u>	<u>\$1,200,000</u>
TOTALS: deletions and curtailment	\$63,154,000	0	\$62,154,000	\$1,200,000

Funded Projects

The Subcommittee failed to delete several of the largest projects from a Budget standpoint, and several of the least environmentally sound, in particular:

**Electrostatic Copy Made
for Preservation Purposes**

	<u>Original Budget</u>	<u>Your Recommendation</u>	<u>House Bill</u>	<u>Senate Bill</u>
+*1. Richard B. Russell Lake, GA & S.Car.	\$21,000,000	0	21,000,000	21,000,000
*2. Cache Basin, Ark.	2,000,000	0	2,000,000	2,000,000
+*3. Columbia Dan, Tenn.	20,000,000	0	20,000,000	20,000,000
+ 4. Auburn Dam, Calif.	39,710,000	0	39,710,000	39,710,000
+*5. Bonneville Unit, Central Utah Project, Utah	31,965,000	15,000,000	32,965,000	31,965,000
*6. Atchafalaya River-Bayous Boeuf,Black,Chene,La.	5,100,000	0	5,100,000	6,300,000
7. Applegate Lake, Ore.	7,400,000	0	7,400,000	7,400,000
8. Hillsdale Lake, Kan.	14,000,000	0	14,000,000	14,000,000
9. Tallahala Creek, Miss	<u>5,000,000</u>	<u>0</u>	<u>5,000,000</u>	<u>5,000,000</u>
TOTALS	146,175,000	0	147,175,000	147,375,000

* = Environmentally significant

+ = Budgetarily significant

If sufficient contingencies are written in concerning the Auburn Project, we can live without deletion of FY78 funds, however.

MODIFICATIONS

You recommended 5 project modifications:

Central Utah Project
Garrison Diversion
Central Arizona Porject (CAP)
Mississippi River-Gulf Outlet (MRGO)
Tensas Basin

The Subcommittee generally agreed with your suggested modifications of CAP,MRGO and Tensas. These changes do not involve FY78 funding modifications.

Your Central Utah modification involves a substantial FY78 change and a major cutback of the project overall. The Subcommittee fully funded the unmodified project as noted above in the listing of funded projects. You have privately indicated to Frank and me that you have an objection to funding this.

The Garrison Project was fully funded by the Subcommittee. This project, however, is now subject to a court settlement which will govern FY78 spending. Therefore, the appropriations action is less important on this project.

COMMENT

In considering your response to the Senate Subcommittee action, the following should be kept in mind:

1. It would be very difficult to compromise on the Russell project. Our amendment's prime sponsor in the House, Butler Derrick, opposed the project at great personal risk.

2. It is difficult to predict at this time the outcome of a House-Senate conference on this issue. Some projects have strong support in the House and weak in the Senate and vice versa.

RECOMMENDATION

A difficult decision will be whether to indicate your support for what Senator Stennis has accomplished or to seek on the Senate floor to knock all of the projects out, using a similar approach to that taken in the House.

While it is important to praise Senator Stennis for his efforts, we will be in a much stronger position in the House-Senate conference if we at least make an effort to knock out all of the projects in the Senate (and then support Senator Stennis' position or some similar compromise as a fallback position). To do otherwise may put us in a weak position in the conference.

Moreover, such a strategy might lead to inclusion of other projects on Senator Stennis' compromise list. Such a strategy would also keep us in good stead with those Congressmen who went down the line with us to knock out all of the projects. If it appears we are pulling back before the conference, they may feel legitimately that we sawed the limb off while they were sitting on it.

The Interior Department also makes the point, with which I am in full agreement, that in order to get Congressional passage of our water reform policies in the near future and in the long term, we will need the full support of those Congressmen who voted with us to knock out all of the projects. Therefore, at this stage, we should take no action which signals to them a retreat from the Administration's determination.

I have talked with Secretary Andrus and he strongly agrees we should "hang tough" until the conference. He stresses that otherwise we will be in a position in the conference where only 4 or 5 of the projects may be out in the end. He indicated that if you wish to support Stennis at this time (which he would not advise), he would like to try to have three additional items included:

a) deauthorization of any project more than 8 years old and not funded or for which a first construction contract has not been awarded;

b) increased cost sharing, along the lines shown by the attachment to this memo; and

c) he also felt that Cache River definitely should be deleted from the remaining projects.

cc: Frank Moore

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

June 20, 1977

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THE PRESIDENT

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COMMENT

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cc: Frank Moore

To: Rick Hutcheson
Fr: Les Francis
MEMORANDUM

Date: June 21, 1977

FOR ACTION:

The Vice President
Hamilton Jordan
Bill Cable
Dan Tate
Jack Watson

FOR INFORMATION:

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Eizenstat's memo 6/20/77 re Analysis of Senate
Committee Action on Water Projects

**YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:**

TIME:

IMMEDIATE

DAY:

TURNAROUND

DATE:

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

"hang tough" until conference
is the only viable position -
You should note that Perkins feels he has a
commitment from the Speaker to keep Yaleville funded
in return for his help on the Lake Arrow issue.
Bill
Cable

CONFIDENTIAL ATTACHMENT

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required
material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE
WASHINGTON

Date: June 21, 1977

MEMORANDUM

FOR ACTION:

The Vice President
Hamilton Jordan
Bill Cable
Dan Tate
Jack Watson *concur*

FOR INFORMATION:

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Eizenstat's memo 6/20/77 re Analysis of Senate
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TO THE STAFF SECRETARY BY:

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IMMEDIATE

DAY:

TURNAROUND

DATE:

ACTION REQUESTED:

X Your comments

Other:

STAFF RESPONSE:

 I concur.

 No comment.

Please note other comments below:

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

6/22
Flank will
not be able
to comment
today 'at though
he has looked at
- per Bill Russell
B

get from comment
today - no need
to wait for
others.
exp by 'p
from my

6/23

MEMORANDUM
OF CALL

TO: Bill

☐ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Jack Watson's Off
OF (Organization)

☐ PLEASE CALL —→ PHONE NO. CODE/EXT. _____

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

re Water Projects
GW concurs.

RECEIVED BY	DATE	TIME

STANDARD FORM 63
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-11.6

GPO : 1969-048-16-80341-1 332-389

63-108

THE WHITE HOUSE

WASHINGTON

June 20, 1977

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